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A

SUCCINCT VIEW
OF THE
LAW OF MORTGAGES.

WITH
AN APPENDIX,
CONTAINING
A VARIETY OF SCIENTIFIC PRECEDENTS
OF MORTGAGES.

By EDWARD COKE WILMOT,
OF GRAY'S INN.

Cavendo tutus—

LONDON:

PRINTED FOR W. CLARKE AND SON, PORTUGAL-
STREET, LINCOLN'S-INN.

1798.

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SUCCESSOR VIEW

OF THE

LAW OF MORTGAGES

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AN APPENDIX

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BY EDWARD COKE WILLIAMS

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P R E F A C E.

IT had frequently occurred to the Author, that a Succinct View of the Law relative to Mortgages, accompanied by some useful and select Precedents, would be a Work of Utility to the junior Part of the Profession.

Having in his Possession a number of modern Precedents of Mortgage Deeds, drawn by the most eminent *Conveyancers*, the Author was induced to compile the theoretical Part of the present Publication, by way of Introduction to them. He claims no merit, beyond compilation. His Object has been,

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to present a general Outline of the established Doctrines relative to Mortgages, in such a Form, as might tend to assist the young Student, in the better understanding the Use and Application of the Precedents.

Should his juvenile Production prove of the smallest Benefit to those, for whom it is more immediately designed, the Author will feel happy in reflecting, that his Hours of Leisure, have not been unprofitably employed.

Chaple in Frith,

February 1st, 1798.

To the Binder.

Take out the Cancel Leaf *E* and insert the Sheet *E*, beginning page 65. Observe also that Signature *I* of the Work is a single Leaf, and cuts off from the Preface.

LAW OF MORTGAGES.

ON MORTGAGES.

MORTGAGING, as practised with us, is apprehended by *some* authors to owe its introduction more immediately to the Civil law, which distinguished between *pledges*, and things *hypothecated*; by *others*, that it was introduced less upon the model of the Roman *pignus*, or *hypotheca*, than upon the Common law doctrine of *Conditions*.

When a licence of alienation was given, about the time of *Hen. 3.* and it became a maxim in

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law,

law, that the purity of a fee simple imported a power of disposing of it as the owner pleased, there were two ways of mortgaging lands introduced, which *Littleton* distinguishes by the names of *vadium vivum*, living pledge, and *vadium mortuum*, dead pledge, 9 *Hen.* 3. 32, 18 *Ed.* 1.

Blackstone classes these estates held in pledge, among estates defeasible on condition subsequent, and divides them as above into *vivum* and *mortuum vadium*.

Vivum vadium, or living pledge, is, when a man borrows a sum (suppose 200*l.*) of another, and grants him an estate, as of 20*l.* per annum, to hold till the rents and profits shall repay the sum so borrowed. This is an estate conditioned to be void as soon as such sum is raised. And in this case the land or pledge is said to be living: it subsists, and survives the debt; and immediately on the discharge of that, reverts back to the borrower.

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This seems to have been the ancient way of pledging lands; for they held, that lands could not be hypothecated; therefore they used to subject the *usufructus*, which continued originally during the life of the feudatory. But, when there was a free liberty given of alienation, then the feudatory could pledge the *usufructus* of the land at pleasure; but, because by this way of pledging, the lender received his money by degrees, and in small parcels, which was very troublesome, and those who lend money to usury are generally willing to receive the whole in a gross sum, therefore this way of pledging is now out of use. *Co. Lit.* 205. See *Mad. Form.*

136.

But *mortuum vadium*, a dead pledge, or mortgage, (which is much more common than the other) is where a man borrows of another a specific sum (*e. g.* 200*l.*) and grants him an estate in fee, on condition that if he, the mortgagor, shall repay the sum of 200*l.* on a certain day, mentioned in the deed, that then the mortgagor may re-enter on the estate so granted in pledge,

or, as is now the more usual way, that then the mortgagee shall re-convey the estate to the mortgagor; in this case the land which is so put in pledge, is by law, in case of non-payment, at the time limited, for ever dead and gone from the mortgagor; and the mortgagee's estate in the lands is then no longer conditional, but absolute.

The distinction between a mortgage and pledge, was taken by the Master of the Rolls, in the late case of *Jones v. Smith*, (reported by *Vez. Jun. v. 2, 378.*) "A mortgage is a *pledge* and more; for it is an absolute pledge to become an *absolute interest* if not redeemed at a certain time. A *pledge* is a deposit of *personal effects*, not to be taken back but on payment of a certain sum, by express stipulation, or the course of trade, to be a lien upon them."

AS TO WHAT CONSTITUTES A MORTGAGE.

NO particular words, or form of conveyance, are necessary to constitute a mortgage.

It may be laid down as a general rule, and subject to very few exceptions, that, wherever a conveyance, or assignment of an estate, is originally intended as a security for money, whether this intention appears from the *deed itself*, or by any *other* instrument, it is always considered in equity as a mortgage, and redeemable, even though there is an express agreement of the parties that it shall not be redeemable; as that the right of redemption shall be confined to a particular time, or to a particular description of persons. Vid. *Newcomb v. Bonham*, 1 Vern. 7, 214. 2 Ca. in Chan. 58, 159. *Howard v. Harris*, 1 Ven. 33, 190. 2 Ca. in Chan. 147. *Talbot v. Braddyl*, 1 Vern. 183, 394. *Barrel v. Sabine*, 1 Vern. 268. *Manlove v. Bell*, Vern. 84. *Jennings v. Ward*, Ibid. 520. *Price v. Perrie*, 2 Freeman, 258. *Francklyn v. Fern*, Barnard. Cha. 30. *Clinch v. Wetherby*, Cas. temp. Finch, 376. *Cooke v. Cooke*,

v. Cooke, 2 *Atk.* 67. *Mellor v. Lees*, 2 *Atk.* 494.
Cottrell v. Purchase, *Cas. temp. Talbot*, 61.
Endsworth v. Griffith, 1 *Bro. Parl. Ca.* 149.

A mortgage may be without covenant or bond for the mortgagor to redeem. *Floyer v. Lavington*, 1 *P. Wms.* 270.

Every loan creates a debt from the borrower, whether there be a bond, or covenant for payment or not. *Howell v. Price*, 1 *P. Wms.* 294.
Balsh v. Hybam, *Ibid.* 2. 455. *King v. King*, 3. 360.

In many of these cases, the courts have found it necessary not only to apply their general principles, but to determine the fact, whether the conveyance was intended as an *absolute* sale, or as a *security* for the money. If the money paid by the grantee was not a fair price for the absolute purchase of the estate conveyed to him;—if he was not let into the immediate possession of the estate;—if instead of receiving the rents for his own benefit, he accounted for them to the grantor,

grantor, and only retained the amount of the interest;—and if the expence of preparing the deed of conveyance was borne by the grantor;—each of these circumstances has been considered by the courts as tending to prove that the conveyance was meant to be merely *pignortitious*. *Butler's Co. Litt.* 205, N. 96. (1)

OF THE DIFFERENT KINDS OF MORTGAGES.

OF the *vadium mortuum* species of mortgages there are two kinds. First, mortgages of the freehold and inheritance; and secondly, of terms for years. *Madox Form.* 318, 319.

First, Of the freehold and inheritance. And here the ancient way was, to make a charter of feoffment on condition that, if the feoffor or his heirs paid the sum to the feoffee or his heirs, he should re-enter and re-possess; and sometimes the condition was contained in the charter of feoffment, and sometimes it was defeasanced by another

another charter, as may be seen in the old forms. *Mad. Form.* 318, 319.

For, as a man might annex a condition to his feoffment, for *cujus est dare, ejus est disponere*, so he might annex a condition by another deed, bearing date and executed at the same time; for being executed at the same time, it is really but one and the same disposition; for *quæ incontinenti fiunt, inesse videntur*. But a defeasance or condition annexed, after the feoffment executed, comes too late, because the livery *coram paribus*, attesting the infeudation, in which there is no condition, the tenant must hold the land according to the tenure of the investiture; but rents, annuities, or warranties, that are things executory, may be defeated by defeasances made at the time of their creation, or any time after; because there is not any necessity of the notoriety of livery, to make an investiture; therefore, being created by deed only, they may be defeated or destroyed by deed alone. *Co. Litt.* 226, 227.

These

These sorts of conveyances were subject to some inconveniences, as, if the money were not paid at the day, so that the estate became absolute, the estate was thenceforth subject to the dower of the feoffee, and all other his real charges and incumbrances; for, though, if the feoffor performed the condition, then he might re-enter, and re-possess himself in his former estate, and consequently was in above all the charges and incumbrances of the feoffee; yet, if he did not literally perform the condition by payment of the money at the day, then the estate was legally subject to the charges and incumbrances of the feoffee, though the money was afterwards paid to, and the estate re-conveyed by the feoffee. *Co. Litt.*

Mortgages for terms are attended with this particular advantage, that on the death of the mortgagee, the term and the right in equity to receive the mortgage debt, vest in the *same person*, whereas, in cases of *mortgages in fee*, the estate on the death of the mortgagee goes to his *heir or devisee*, and the money is payable to his *executor*

curator or administrator. This produces a separation of rights that is often attended with great inconvenience, both to the mortgagor and mortgagee.

On the other hand, in cases of mortgages for years there is this defect, that if the estate is foreclosed, the mortgagee will be only intitled for his term.

To guard against which, it has been thought adviseable to make the mortgagor covenant, that on non-payment of the money, he will not only confirm the term, but convey the freehold and inheritance to the mortgagee, or as he shall appoint, discharged of all equity of redemption. † *Co. Litt. 205. n. 1.*

Since the low state of the funds hath made money on mortgage less easily procured than in more prosperous times, it hath not been unu-

† This mode is said to have been introduced by the late Mr. Booth.

sual for the party lending the money, to stipulate that it shall lie on the land for a given period of time, which agreement is made part of the deed, and hath been considered by the best authorities as binding upon the parties. *Powel Pow. 9.*

OF THE INTEREST OF THE MORTGAGOR IN
THE PREMISES MORTGAGED BY HIM.

AS soon as the estate of the mortgagee is created, which is now done, either by *lease and release*, *bargain and sale*, or more frequently by creation of *a term for years* in the premises, he may immediately enter upon the lands, but is subject to be dispossessed upon performance of the condition, by payment of the mortgage money, at the day limited. *2 Black. 158.*

The usual way, therefore, is to agree that the mortgagor shall hold the premises till the day assigned for payment, and that the mortgagee shall not intermeddle with the possession until

default

default therein. And in case of failure, where by the estate becomes absolute, the mortgagee may enter upon it, and take possession, without any possibility *at law* of being afterwards evicted by the mortgagor.

It was formerly contended, that the mortgagor, after forfeiture of the condition, had but a mere right to reduce the estate back to his own possession, by payment of the money.

It is now established that the mortgagor has an *actual* estate in equity, which may be *devised, granted, and entailed*; that the entails may be barred by *fine* and *recovery*, but that he only holds the possession of the land, and receives the rents of it by the will or permission of the mortgagee, who may by ejectment *without any notice*, recover against him or his tenant. *Butler's Co. Litt.* 205. n. 1. *Moss v. Gallimore, Doug.* 266.

In this respect the estate of a mortgagor is inferior to that of a tenant at will. *Ibid.*

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In equity the mortgagee is considered as holding the lands merely in the nature of a pledge, or security, for the payment of his money. A mortgage, *though in fee*, (the legal estate in which descends to the heir at law) is considered only as *personal estate in equity*. *Ibid.*

Hence, also, a mortgagee, though in possession, will in case of a living becoming vacant, prior to foreclosure, be compelled in equity to present the nominee of the mortgagor. *Jory v. Cox, Prec. Chan. 71. Amburst v. Dawling, 2 Vern. 401.* and that even though nothing but the advowson is mortgaged to him, and the deed contain a covenant that on any avoidance the mortgagee should present. *Mackenzie v. Robinson, 3 Atk. 559*; for in such cases, though the presentation is not deemed the subject of value, and therefore cannot be brought into the account; it might be a benefit beyond the securing of the principal debt, and lawful interest thereon;—which decision over-rules that of *Gardiner v. Griffiths, 2. P. Wms. 403.*

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In such case, however, it is said that the mortgagee of the advowson might pray a sale. *Mackenzie v. Robinson*. But quære, if such sale could be decreed pending an avoidance? *Fonb. Treat. Eq.* 2 vol. 262.

“ The possession of the mortgagor is the possession of the mortgagee; and as to the inheritance, they have but one title between them.

“ The mortgagor has no power of making leases to bind the mortgagee. He cannot against the will of the mortgagee do any act to disseize him. *Cro. Jac.* 660. *Cro. Car.* 304. 3 *Lev.* 388, and *Skin.* 424. And the reason is because the mortgagee, so long as he receives his interest, is virtually and in the eye of the law in possession.

“ The mortgagee has a right to the actual possession whenever he pleases; he may bring his ejectment at any moment that he will; and he is entitled to the estate as it is, with all the crops growing on it. He is also entitled to all

the rents which have become due since his mortgage, and which are unpaid; as was determined in *Moss v. Gallimore*, which case I hold to be sound law; and I am desired by Lord Mansfield to declare, that on consideration he is most perfectly satisfied with that decision."

[All this was laid down by Mr. J. Buller, in an elaborate judgment which he delivered in the court of King's Bench, in the case of *Birch v. Wright*, 1 T. R. 378.]

It is a settled doctrine in a court of equity, that a mortgagor in possession cannot bar a mortgagee by a fine and nonclaim; for, though the mortgagee be in reality out of possession, yet where that is done by the consent of both parties, and the nature of the contract requires that it should be so, while the interest is paid, it would be against the original design of the contract that any act of the mortgagor, except the payment of money and interest, should deprive the mortgagee of his security.

A recovery

A recovery suffered by a mortgagor, tenant in tail, lets in all precedent incumbrances. *Porter v. Emery*, 1 *Chan. Rep.* 97. *Goddard v. Complin*, 1 *Cha.* 119.

By the 4th and 5th of *Will. & Mar.* if any person mortgages his estate, and does not previously inform the mortgagee, in writing, of a prior mortgage, or of any judgment, or incumbrance, which he has voluntarily brought upon his estate, the mortgagee shall hold his estate as an absolute purchaser, free from the equity of redemption of the mortgagor.

It is not, however, usual for mortgagees to take possession of the mortgaged estate, unless where the security is precarious or small, or where the mortgagor neglects even the payment of interest; when the mortgagee is frequently obliged to bring an ejectment. 2 *Black.* 159.

A mortgagor is not entitled to emblements when he is turned out of possession by the mortgagee. *Moss v. Gallimore*, *Doug. Rep.* 283.

A mortgagor

A mortgagor in possession gains a settlement by 40 days residence, because the mortgagee, notwithstanding the form, has but a chattel, the mortgage being only a pledge to him for the security of his money; and the original ownership of the land still residing in the mortgagor, subject only to the legal title of the mortgagee so far as such title is requisite to the end of his security. After the mortgagee has got into possession, he might gain a settlement. *The King v. St. Michael's, Doug. 632.*

A mortgage by *baron* and *feme* of her estate is void, after the baron's death, and not merely voidable, though in the form of a lease.

But a re-delivery of the mortgage-deed by the wife, after the husband's death, will make it good; and circumstances may operate as a virtual re-delivery. *Goodright v. Strathan, Doug. 53. n. 17.*

If a lord of a *manor* mortgage the manor in fee to A, and afterwards purchase *copyholds* held of the manor, and takes *surrenders* of them to him-

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self

self in fee, they shall enure to the benefit of the mortgagee. *Doug. Rep.* 710. *Doe v. Pott.*

And a *settlement* by the lord of all his estate mortgaged to A, shall pass the equity of redemption of such surrendered copyholds. *Ibid.*

If a mortgagor *devise* the mortgaged premises, and afterwards pay off the mortgage, and the mortgagee convey the *legal estate* to a trustee in trust for the mortgagor, this change of the *legal estate* shall not operate as a *revocation* of the will. *Ibid.*

A mortgagor cannot set up the title of a third person against his mortgagee in ejectment. *Doe dem. Bristowe, v. Pegge, T. R. v. 1. 759.*

The methods of redemption and foreclosure being found dilatory, expensive, and inconvenient, not only to the mortgagee, but also to the mortgagor, the legislature deemed it necessary to interfere, for the mortgagor upon non-payment, according to the condition, became *irrelevant*,

levant, except in a court of equity, until the stat. 7 Geo. 2. c. 20. That act recites, that in ejectments by mortgagees for the recovery of the mortgage lands, and in actions on the bonds given by the mortgagors to pay the money, courts of law have not power to compel mortgagees to accept the principal and interest due to them, and costs, or to stay mortgagees from proceeding to judgment in such actions; but mortgagors must have recourse to a court of equity; in which case courts of equity do not relieve till the hearing of the cause; for remedy thereof it is *enacted*, that in action on bond for payment of mortgage money, or in ejectments at any of the courts of Westminster, at sessions in Wales, or in the counties Palatine of *Chester*, *Lancaster*, or *Durham*, for the recovery of mortgaged lands, when there is no suit depending in equity for foreclosing thereof; if the person have a right to redeem, and who shall become defendant in such action, shall at any time pending such action pay such mortgagee, or, in case of his refusal, bring into court all principal and interest due on the mortgage, and all costs; the

monies paid to such mortgagee, or brought into court, shall be in full discharge of the mortgage, and the court may compel such mortgagee to reconvey the mortgaged lands, and deliver up all deeds relating to the title thereof *. And it also enacts that in all suits in equity for foreclosure, *courts of equity*, upon application made by the defendant, having a right to redeem, and upon admitting plaintiff's right, may at any time before the cause be brought to hearing, make such decree therein, as they could have made in case such cause had been regularly brought to hearing. *Shep. Touch. p. 140. n. 1.*

But it is provided that this act shall not extend to any case where the person against whom the redemption is prayed, shall (by writing un-

* But in the late case *Goodtitle ex dem Taysum v. Pope*, the Court would not stay proceedings in an ejectment brought by a mortgagee against the mortgagor, on the latter paying principal, interest, and costs; the latter having agreed to convey the equity of redemption to the mortgagee. *T. R. v. 7. p. 185.*

der his hand, or the hand of his attorney, agent, or solicitor, to be delivered before the money shall be brought into such court of law, to the attorney or solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other, or different principal sums than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question, in any cause or suit, shall be controverted, or questioned by, or between different defendants in the same cause, or suit; nor shall be any prejudice to any subsequent mortgagee or incumbrancer.

By the 7th W. & M. c. 25, it is enacted, "that no person shall be allowed to have any vote in election of members to serve in parliament for or by reason of any trust estate, or mortgage, unless such trustee, or mortgagee, be in *actual* possession, or *receipt*, of the rents and profits of the same estate; but that the mortgagor

gagor or *cestui que trust* in possession, shall and may vote for the same, notwithstanding such mortgage or trust.

And by the 9th *Anne*, c. 5. which requires that knights of the shire should have 600*l.* per annum; and every other member 300*l.* per ann. it is enacted, "that no person shall be qualified to sit in the House of Commons, within the meaning of the act, by virtue of any mortgage, whereof the equity of redemption is in any other person, unless the mortgagee shall have been in possession of the mortgaged premises for 7 years before the time of his election."

OF THE ESTATE OF THE MORTGAGEE.

THE estate of the mortgagee, until forfeiture, still continues as it was at Common law, before the interference of courts of equity; he is intitled to an estate as tenant in mortgage in fee, or for term of years, subject to any agreement made between him, and the mortgagor, relative

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to the possession, and defeasible at law by performance of the condition. As soon as the estate is created he may enter into possession, but as the payment of the interest is the principal object of the mortgagee, he seldom avails himself of that right, unless obliged so to do, to secure payment of the interest, or with a view to compel the re-payment of the money.

It follows from hence, that all leases, or other interests in the land, made or conveyed by the mortgagor *subsequent* to the mortgage, though *before* forfeiture, are *void* against the mortgagee. As to him, the tenants under such leases, or persons claiming such interests, may be considered as trespassors, disseizors, and wrong doers. Vide *Keech v. Hall*, *Doug. Rep.* 21.

Upon the same principle the mortgagee (since the stat. 4th *Ann. c.* 16, to dispense with the necessity of attornments of tenants) on notice, becomes intitled to the rent of the premises mortgaged, (if let) from the time of executing the conveyance; for the rents and profits are liable to the debt as well as the premises themselves.

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This was determined in the case *Moss v. Gallimore*, *Doug. Rep.* 266, to which we have before had occasion to refer.

In the case of *Sparkes v. Smith*, 2 *Vern.* 275, the court refused, on bill, to compel an assignee of a term on mortgage to discover his assignment; the object of the lessor in requiring it, being to make him liable to the covenants of the mortgagor, although he had not taken actual possession of the premises.

It was settled in the case of *Eaton v. Jaques*, *Doug. Rep.* 438, that if a term be assigned by way of mortgage, with a clause of redemption, the lessor cannot sue the mortgagee, as assignee of *all* the estate, &c. of the mortgagor, even after the mortgage had been forfeited, unless the mortgagee has taken actual possession, in order to entitle the lessor to his action for rent; for in such case the rent is due by the contract, and not in respect of the occupation, which it is, in the case of a tenancy at will. *Bellasis v. Burbrick*, 1 *Salk.* 209. See also 1 *Vent.* 41. 1 *Sid.* 423. and *Fonblanque's Treat.* v. 1. 348.

In

In *Eaton v. Jaques*, the case arose from a mere slip in the attorney in making the conveyance; for if he had made it an *under lease* by leaving a reversion of a day in the mortgagor, the landlord would have had no pretext to call upon the mortgagee. *Per Ld. Mansfield*, in delivering judgment.

Though a derivative lessee, or under-tenant, is liable to be distrained for rent, during his possession, he is not liable to be sued on the covenants of the lease, there being no privity of contract between him and the lessor. *Holford v. Hatch*, *Doug. Rep.* 183. And see the case of *Palmer v. Edwards*. *Ibid*, in a note—Also *Walker v. Reeves*. *Ibid.* 461, note (1), and *Wadham v. Marlow*, 1 *T. R.* 92.

But if the mortgagee enters into possession, he becomes liable to all covenants that run with the land, for he takes it *cum onere*, and enjoying the profits, he must submit to the losses. *Traberne & al. v. Sadleir*, 1 *Bro. Parl. Ca.* 105.

Although

Although the money be not paid at the day, and the mortgagee brings his ejectment, and enters into possession, yet, until after foreclosure, the mortgagee is considered in equity as having but a chattel, and the mortgage is only a security; the mortgagor is the real owner.

It follows, of course, from this view of the transaction, that the mortgagee before foreclosure, cannot exercise any act of ownership over the property, which may incumber the mortgagor. He can make no lease of the land for years to an under tenant, as in the case of *Hungerford v. Clay*, 9 Mod. Ca. Eq. 1. 2. Eq. Ca. 610.

Though at law a mortgagee in fee may commit waste, yet he will be restrained in equity, as in *Hanson v. Derby*, 2 Vern. 392.

However, although the mortgagee cannot, to better his security, do any act to incumber the estate mortgaged, which will be valid against the mortgagor after redemption, nor will be justified in committing waste; yet he will be entitled

to

to such expences as he shall incur in necessary repairs, or other acts, for the preservation of the estate mortgaged; and may certainly add this to the principal of his debt, and it will carry interest.

As, if a leasehold estate be mortgaged, and there is no covenant on the part of the mortgagor, that he shall procure the lives to be filled up, the mortgagee cannot compel him to do it; but must pay the expence of renewing and reimbursing himself by adding it to the principal of the mortgage, and it shall carry interest. So it was determined in the case of *Manlove v. Ball*, 2 Vern. 84.

If the mortgagee procures a grant of a new term, after the old one be actually expired, yet this will be a trust for the mortgagor, and shall be redeemed with the principal; for it is supposed to have proceeded from having had the original term; and, although there be nothing in fact in having a tenant-right, yet, as such regard is had to it, in the estimation of the world, it

it will be looked on as the occasion of the lease,
Lte v. Lord Vernon, 7 Brown's Parl. Ca. 432.

[The following passage upon the subject of
 Tenant-Right, extracted from Mr. *Butler's* truly
 masterly and elegant note upon the doctrine of
 Uses, (*Co. Lit.* 290. *b.* ix.) will, it is hoped, be
 deemed acceptable.]

“The favour which is shewn to *old tenants*
 by granting them a *renewal* of their leases, pre-
 ferably to a stranger, has given them, in the eye
 of the law, an interest *beyond* their subsisting
 term; and this interest is generally termed their
tenant-right of renewal. This is particularly
 applicable to *leases from the crown*, from the
church, from *colleges*, or from *other corporations*. In these cases, it often happens that the
 situation of the parties is such, that there are
 successive renewals of the lease, or successive en-
 largements of it by reversionary grants. On the
 one hand, the property is more valuable to the
 actual tenant than any other person; he can
 therefore afford to pay more for the renewal than
 another. On the other, there is a natural par-
 tiality

tiality in the lessors to the present tenants, particularly if they, or those under whom they claim, have long been tenants of the land in question. These circumstances have produced what is called *tenant-right*. Attempts have been made to establish an obligation in landlords to renew, but they have not succeeded. The renewal, therefore, is still a matter of favour, and of chance; but is so far valuable, that it enhances the price of the property on sales. Provisions for renewal are inserted in mortgages and settlements; and the right of the parties to this chance of renewal is guarded by courts of equity. In *mortgages* of this species of property, where this chance of renewal exists, there should always be inserted in the mortgage deed, a *covenant* from the mortgagor for the renewal of the lease, and for vesting such new lease in the mortgagee, with an agreement, that, if the mortgagor neglects to renew, it shall be lawful for the mortgagee to renew, and that the fine and expences of renewal shall be a charge upon the premises, and bear interest. In *settlements* also, there should be a power authorizing the trustees
from

from time to time, to renew the leases, and for that purpose to raise money by mortgage. Where these provisions are not made, the fine and expences are to be paid by the persons having the actual life interest, and those intitled afterwards, each contributing proportionably to their respective interests. If the *actual* tenant for life advances the whole of the money, and dies without having been repaid it, the whole is a charge upon the leasehold premises, and the personal representatives of the tenant for life are entitled to claim the whole. But if the *leasehold* is charged with annuities, the annuitants are not bound to contribute. See *Pickering v. Bowles*, 1 *Brown's Chan. Ca.* 197, and the cases there cited, and *Nightingale v. Lawson*, *Ibid.* 440. As to the protection afforded by the *courts of equity* to persons entitled to this tenant-right, courts of equity have so far recognized the tenant-right to be a real benefit, and as such, entitled to their protection, as to decree, that new or reversionary cases, (gained by undue means or supposition of the tenant-right of renewal,) should be for the benefit of the persons interest-

ed in the ancient leases; and, consequently, that those who obtain such new leases, and were thereby legally possessed of them, should be trustees for that purpose. The cases on this head may be divided into three classes: the first, where the renewal has been obtained by persons having no beneficial interest in the old lease, and no connection with the lessee, and has been obtained by a suggestion of what was false, or a suppression of what was true. The second, where the parties obtaining the renewal have no beneficial interest, but are connected with the old lessee, as guardians, trustees, or executors. The third, where the persons renewing have only partial and limited interests, as tenants for life, mortgagors, or mortgagees; in all these cases, the parties renewing have been uniformly declared trustees for the persons beneficially interested in the ancient lease, either wholly, or in part, according to the particular circumstance of the case; the court presuming that the new lease was obtained by means of the connection with, or reference to, the interest in the ancient lease. The cases on the doctrine of the tenant-right

right of renewal are numerous. One of the most important of them is that of *Rowe v. Chester, Amb. 715*. Another very important case on this learning, is that of *Lee v. Vernon*, heard on appeal to the House of Lords, May 11th, 1776."

The mortgagee is not obliged to lay out money, except to keep the estate in necessary repair. 3 *Atk.* 518.

OF THE PAYMENT OF THE INTEREST OF MONEY
LENT ON MORTGAGE, AND OF THE LEGAL
PERFORMANCE OF THE CONDITION.

INTEREST, as defined by Dr. *Adam Smith*, is the compensation which the borrower pays to the lender, for the profit which he has an opportunity of making by the use of the money; part of that profit naturally belongs to the borrower, who runs the risk, and takes the trouble of employing

ploying it; and part to the lender, who affords him the opportunity of making this profit.

The rate of interest has, in most countries, been regulated by law. The Roman law allowed of 12 per cent. which Justinian reduced at one stroke, to 4%. A statute of the 13th of Queen Elizabeth, which was the first that tolerated the receiving of interest in England at all, restrained it to 10l. per cent. a statute of 21 James 1, to 17. to 8l. of Charles 2. c. 13, to 6l. of 12 Q Anne, stat. 2. c. 16, to 5l.—on pain of forfeiture of treble the value of the money lent; at which rate and penalty the matter now stands.

But a greater rate of interest is still allowable in Ireland, and our Plantations. It has been doubted, whether the 12 Anne did not extend to money lent on lands in Ireland, or our Plantations, where the mortgage is executed in Great Britain. But the 14th Geo. 3. c. 79, declares all such securities made previously to that act to be valid, notwithstanding the 12th Anne, where the interest is not more than the established rate of

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the particular place; and that all *future* securities of a like kind shall also be valid, where the interest is not more than 6 per cent. Vid. *Harg. Co. Litt.* [4. a.] n. (1.)

The policy of these regulations is, to check the power of accumulating wealth without industry; to give encouragement to trade, by enabling adventurerers in it to borrow money at a moderate price; and of late years, to enable the State to borrow the Subject's money itself.

The mortgagor, in order to perform the condition, and make a sufficient tender, must be attentive to the time and manner of making his tender.

As to the *time*, if the payment is mentioned to be made *on* the day *indefinitely*, any convenient time *before the last instant* of the day, is the *uttermoſt* time appointed by law. *Co. Lit.* 202. Vide also *Comyns Dig. Condition*, (G. 8.)

With

With respect to the *manner* of making a legal and sufficient *tender* of the mortgage money, if the condition be (as it usually is) to pay *lawful money of Great Britain*, that is to be understood, *money coined by the King's authority, or foreign coin by proclamation* made current within the realm. *Co. Litt.* 207, a. 5, 114. c. and though it may be very inconvenient to a mortgagor to procure the whole sum in cash, yet he is to consider that *Bank notes are not strictly a legal tender, unless offered to be turned into money.* *Eq. Ca. Abr. Mortgages, (D). pl. 9. Vin. Abr. Tender, (B).*

And it seems, that, if at the time appointed for payment, *base money* be current in lieu of *sterling*, tender at the time and place of that base money is good, and the creditor can have no other. *Pong v. John de Lindsay, and others, Dyer's Rep. edit. 1796. v. 1. (826.) pl. 69*, and the cases there referred to.

But *tender* of the money *after* the day and *refusal*, upon an *after debasement* of the coin, the debtor shall bear the loss. *Ibid. pl. 70.*

The mortgagor may bring the money in purses, or bags, without shewing or telling it; it being incumbent upon the mortgagee to put it out and tell it. 5 Rep. 115.

Though where the person held the money on his arm in a bag, at the time of offering payment—this was adjudged no good tender; for it might be counters, or base money. Noy, 74.

It also behoves the mortgagee to inspect the goodness of the money; for if there is any bad money in the bags, and the mortgagee accepts it, the mortgagor is not bound to change it. 5 Co. Litt. 115. Co. Lit. 208. a. See further in Vin. Abr. Tender. (E.)

And in a very recent case in B. R. Mr. J. Buller says, "This court has never yet determined that a tender of Bank notes is not strictly a legal tender; but if they have been offered, and no objection has been made on that account, this court has considered it to be a good tender."

See

THE LAW OF MORTGAGES.

See *Wright v. Read*, *Durnford and East's Rep.*
Hil. 1790.

In that case Lord *Kenyon*, Ch. J. declared that Bank notes are considered as money to many purposes. His Lordship mentioned *Miller v. Race*, 1 *Burr.* 452; according to that reporter, Lord *Mansfield* declared "that Bank notes have acquired by the general consent of mankind, the credit and currency of money, to all intents and purposes; that they are as much money as guineas themselves are, or any other current coin." The point in the case in *Burrow* was not, however, of that of a tender.

If a tender is made of more than is due, it is good; and the party to whom tendered ought to take out what belongs to him. 5 *Rep.* 114.

A mortgagee refusing to receive money on tender, after forfeiture, will lose his interest from the time of the tender. *Sir J. Austin v. Exec. Sir Wm. Dodwell.* 1 *Eq. Ca. Abr.* 318. 9.

But

But as to a tender of mortgage money, there ought to be *reasonable notice* of paying it in; and if the tender be insisted on, to *stop interest*, the money must be *kept dead* from that time, because the party is to be *uncore prift* *. *Gyles v. Hall, 2 P. Wms. 377.*

And it seems that the notice must be *six calendar months*, at least, before the paying off the mortgage, and the money must have been tendered *on the day of the determination of that notice*; for, where the mortgagor omitted to tender the money *on the very day*, on which the notice expired, and in consequence thereof the mortgagee refused the tender, the payment of the interest was held, by the Lord Hardwicke, *not to*

* *Uncore prift*, means the plea of a defendant, in nature of a plea in bar; where being sued for a debt due on bond, &c. on a certain day past, to save the forfeiture of the bond, &c. he says that he *tendered* the money at the day and place, and that there was no person there to receive it; and that he is also *still ready* to pay the same.

be *thereby suspended*: for that, by the omission of the mortgagor, the mortgagee was become intitled to a *further notice of six calendar months*, at the expiration of which, a *strict tender* must be made. *Hix v. Ling, Powel, 412.*

And that a tender must be *strictly made*, in order to *stop interest* on a mortgage, see *Bishop v. Church, 2 Vern. 372.* *Garworth v. Bradley, 2 Vern. 678.* *Sbrapnell v. Blake, 2 Eq. Ca. Abr. 603. pl. 34.* and *Wiltshire v. Smith, 3 Atk. 90.*

And such a legal tender as will suspend the interest when made to the mortgagee, will also bind his executors, or devisee. *Sir J. Austin v. Exec. of Sir W. Dodwell.*

But in such case, it seems the plaintiff ought to *make oath* that the money was *always ready*, and no *profit* was made of it; which may be controverted by the mortgagee; who may prove the contrary, namely, that the mortgagee was not ready to repay it, in which case the interest must run on. *Gyles v. Hall, 2 P. Wms. 378.*

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The money being a sum in gross, and collateral to the title of the land, the mortgagor must tender it, to the *person* of the mortgagee, and it is not sufficient to tender it *upon the land*.

But if a time and place be appointed for payment of the money, in that case he need not seek for the mortgagee, or be in any other place, but that comprized in the indenture, or *there*, longer than the time specified therein. *Powel*, 413.

And so it is, although a place be not appointed in the proviso, if the mortgagor *give notice where* he will pay it off.

As in the case before cited of *Gyles v. Hall*, where six months notice was given to pay in the mortgage money at Lincoln's Inn Hall; though that was not the place mentioned in the proviso of the deed, yet, as the money was lent in town, and no objection made to the notice, there was no reason for a personal tender, or to make the mortgagor carry a large sum of money to Oxford, where the mortgagee lived.

In

In some cases a tender at the *house* of the mortgagee will be sufficient. Thus,

Where there was a mortgage, and the mortgagor afterwards meeting the mortgagee, said to him, "I have monies now, I will come and redeem the mortgage;" to which the mortgagee replied, "he would hold the mortgaged premises as long as he could; and then, when he could hold them no longer, let the Devil take them if he would;" afterwards the mortgagor went to the mortgagee's house with the money, more than sufficient to redeem, and tendered it there, but it did not appear that the mortgagee was within, or that the tender was made to him. The Chancellor decreed a redemption, and that the defendant should have no interest from the time of the tender, because of his wilfulness. *Vide Meaning v. Burgefs*, 1 Ch. Ca. 29, and *Peckham and Legay*. *Ibid.*

But if there be a deed of assignment presented to be executed, at the time when the tender is made, in which there are covenants, the mortgagee

gagee is intitled to lay them before his attorney, and shall have reasonable time allowed him to do so before the interest shall stop. As in the case of *Wiltshire and Smith*, 3 Atk. 90.

So if there be a controversy, to whom the equity of redemption belongs, no assignment can be made until that point is settled; therefore the interest of the mortgagee will not cease, although the money be tendered to the mortgagee, and he refuse it. *Sharpnell v. Blake*, 2 Eq. Ca. Abr. 603. pl. 34.

A distinction is made in chancery between an agreement, that the interest shall be raised if not punctually paid, and for abatement thereof upon punctual payment. For in the former case it is considered as a penalty, which the courts of equity will relieve against; but in the latter, as a condition, which must be strictly adhered to; in which case the debtor cannot have relief in equity after the day of payment is elapsed, because the abatement is to be upon a condition which is not performed. 3 Burr. 1374, 5.

Thus

Thus where mortgagee reserving 6 *per cent.* with a proviso to take 5*l.* if paid within 3 months —on a *great* arrear incurred the court would not relieve; otherwise, in case of a *small* slip of time. *Brown v. Barkham*, 1 *P. Wms.* 652.

But though these and such like restrictions are relieved against, to make them answer the primary intention of the parties, yet, if A. on a mortgage lends money at 5 *per cent.* but agrees in the deed, that if the money were paid within three months after it became due, that he would accept of 4 *per cent.* and the mortgagor neglects to pay the interest within the time, equity will not relieve him, for he must pay 5 *per cent.* for though the court relieves against unreasonable penalties, yet this is not so, for the mortgagee might have refused to lend his money under 5 *per cent.* *Prec. Chan.* 160. 1. *P. Wms.* 653.

Where the master's report of the *quantum* of interest due on a mortgage is confirmed, the interest from that time becomes principal, and will carry

carry interest. Vide *Butler v. Duncomb*, 1 P. Wms. 553. *Brown v. Barkham*. *Ibid.* 652.

But where the mortgagor signs an account, whereby so much is admitted to be due for interest, this will not carry interest, unless the mortgagor, by some *letter*, or *writing*, under his hand, agrees to make it principal. *Ibid.* 653.

OF THE EQUITY OF REDEMPTION, AND
WHO MAY CLAIM IT.

BY the *Civil law*, in case of delay of payment, the creditor had power to sell the pledge, allowing his debtor *two years* after notice given to redeem it.

In a mortgage in *England* if the money be not paid at the day assigned, the property of the land becomes absolutely vested in the mortgagee, by the *Common law*, but may be reclaimed by the right owner, by what is called *the equity of redemption*.

redemption. *Halifax's Analysis of the Rom. Civ. Law*, 2d edit. p. 60.

Originally there was no right of redemption in the mortgagor.

Lord Hale, in the case of *Rose Carrick v. Barton*, 1 Chan. Ca. 219, says, that in the 14th year of Ricb. 2. the parliament would not admit of redemption. See the printed rolls, vol. 3. p. 259. It was however admitted not long after.

But after its admission, if the money was not paid at the time appointed, the estate became liable, in the hands of the mortgagee, to his legal charges; to the dower of his wife; and to escheat;—and it was an opinion that there was no redemption against those who came in by the post.

However, equity now permits all persons to redeem, who have any estate or interest in the equity of redemption of the mortgagor, as tenant for life, remainder man, or reversioner, jointress, tenant by

by the courtesy, by *elegit*, statute merchant, or staple, &c. all these may redeem; and *volunteers* are equally admitted to redeem as purchasers for a valuable consideration. *Howard v. Harris*, 1 *Vern.* 193. 2 *Eq. Abr.* 594. And, therefore,

Where a man made a voluntary deed, and afterwards mortgaged the same lands, and the first deed, on trial at law, was found fraudulent against the mortgagee, yet on a bill exhibited by the person to whom the deed was made, to redeem the mortgage, it was held, that though the first deed was *fraudulent*, because *voluntary*, as to the mortgage, yet it was *good* as to the equity of redemption, and would pass *that*; for a voluntary deed would bind the party and his heirs. *Rand v. Cartwright*, 1 *Chan. Ca.* 59. 1 *Vern.* 193. *Bac. Abr.* v. 2. 638.

Assignees of a bankrupt may redeem, or assign an equity of redemption; and the assignment shall prevail against the second mortgagee, who purchases a prior mortgage, if the second mortgage was made after a commission sued out, although

though the mortgagee had not notice of the commission.

If a mortgage is made by a bankrupt, tenant in tail, without suffering a recovery, the assignees shall take advantage of this defect, and hold the lands after the death of the bankrupt, clear of the mortgage, as in *Beck v. Welsh*, 1 *Wils.* 276. But if the deed contains a covenant for further assurance, the mortgagee will be entitled to retain his security against the creditors under the commission. *Edwards v. Applebee*, cited 2 *Bro.* 652. *Pye v. Daubuz*, 2 *Bro.* 595. *Cooke's B. L.* 350.

A tenant may put himself in the place of a mortgagor, and either redeem himself, or get a friend to do it. *Keech v. Hall*, *Doug. Rep.* 21.

The assignee in equity may redeem a mortgage. *Howard v. Harris*, 1 *Vern.* 193. 2 *Eq. Ca. Abr.* 594.

It is a maxim that he who will have equity to help

help where the law cannot, shall do equity to the party against whom he seeks to be relieved. *Francis's Maxims, Max. 1.*

And upon this rule, a mortgage given as a counter security to a joint obligor, shall stand as a security for a second joint bond, entered into by the same person afterwards, without any agreement for that purpose; and the heir shall not redeem without saving harmless against both. *St. John v. Holford, 1 Chan. Ca. 97.*

So, if the mortgagor borrows more money of the mortgagee, and gives bond for it, the heir of the mortgagor shall not redeem without also paying the debt by bond, if that the mortgagor bound himself and his heirs in the bond. *Shuttleworth v. Laywick, 1 Vern. 245. Windham v. Jennings, 2 Ch. Rep. 128. Coleman v. Wynch, 1 P. Wms. 775. Powis v. Corbett, 3 Atk. 556. Troughton v. Troughton, 1 Vez. 87.*

But, though the heir cannot himself redeem, without discharging both the mortgage and
bond,

bond; yet if the heir assign the equity of redemption, his assignee may redeem, upon payment of the mortgage only. *Coleman v. Wynck*, 1 P. Wms. 775. *Bayley v. Robson*, Prec. Ch. 89.

It is a known rule in equity, that where there is an estate subsisting at law, equity will not destroy it, unless the party redeeming will satisfy all equitable demands out of the estate.

And therefore, if there be two mortgages, and one be defective, the Court will not suffer one to be redeemed without the other. *Purefoy v. Purefoy*, 1 Vern. *Shuttleworth v. Laywick*, 1 Vern. 245. *Mergrave v. Le Hooke*, 2 Vern. 207. *Pope v. Onslow*, 2 Vern. 286. *Ex parte Carter*, Amb. Rep. 733. *Roe v. Soley*, 2 Black. Rep. 726. *Jones v. Smith*, 2 Vez. Jun. 376.

A mortgage by a popish heir may be redeemed by the next protestant heir. *Jones v. Meredith*, et al. Burr. 346. *Comyns Rep.* 661.

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An equity of redemption will follow the custom as to the legal estate in *Borough English* lands, if mortgaged, the equity of redemption will descend to the youngest son to whom the lands descend.

So in mortgages of *Gavelkind* lands, which descend to all the children equally, the equity of redemption descends to all likewise. 2 *Vez.* 304.

And it may be devised, as in *Philips v. Hale*, 1. *Ch. Rep.* 190, *et Vide* 2 *Burr.* 978.

So a judgment creditor may redeem against a mortgagee of a leasehold estate, who is likewise a bond creditor; but before the bill is brought to redeem, a writ of execution must be sued out; for until that be done the judgment creditor hath no *lien* on the leasehold estate, and for want of this being taken out, the bill in the principal case was dismissed.

The Crown may redeem estates mortgaged, forfeited by the mortgagor by being indicted and outlawed for high treason.

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The tenant for life and jointress contribute towards the redemption of the mortgage debt. In *1 P. Wms. 650*, the reporter states that he mentioned to the Court, that the life-estate (especially where the tenant for life had the remainder in fee) might be valued at two-fifths, which had been done in some cases; yet the Court said, how equitable soever that might be, it was not the practice; for which reason it would be dangerous, and create uncertainty, to go out of the rule; and the Register said, he had never known a life valued at more than one-third.

But the remainder-man, or owner of the inheritance, must come in to redeem in the life of the tenant for life, or jointress; for he cannot after their decease compel a contribution from their assets. *1 P. Wms. 650. Cornish v. Mew, 1 Cb. Ca. 271. Prec. Ch. 62. Howell v. Price, 424.*

In what cases the *Dowress* will be permitted to redeem, is a question, says Mr. *Butler*, which involves in it many points of great nicety.

The law requires a legal *seizin* in the husband; and it is a settled point, that the wife cannot be endowed of a *trust estate*. Upon this principle it was generally understood that the wife was not entitled to her dower out of an estate, which at the time of her marriage was subject to a mortgage in fee.

But this, perhaps, was never formally determined, till the case of *Dixon v. Onslow*, decreed by Lord *Loughborough*, and the other Lords Commissioners, on the 13th November, 1783, against the wife, without hearing the counsel for the heir.

But the case is different with respect to mortgages for *Terms of years*.

It may be observed here, 1st. That at Common law, if a lease be made for a term of years rendering rent, the wife is entitled to her dower of a third part of the reversion by metes and bounds, and to a third part of the rent; and execution will not cease during the term.

2dly.

2dly. If the husband makes a gift in tail, rendering rent, as the rent is payable out of, or in respect of, an estate of inheritance, the wife will be endowed of a third part of the rent.

3dly. If the husband makes a lease for life rendering rent, the wife is not entitled to her dower of the rent, because it is not payable in this case, out of, or in respect of, an estate of inheritance.

4thly. If the husband makes a lease for years reserving no rent, then judgment will be given for the wife, with a *Cessat executio* during the term; this, if the term be of long duration, deprives her virtually of her dower.

5thly. If a person purchases an estate of inheritance, which is in mortgage for a term of years, whether he only purchases the equity of redemption, or discharges the mortgage, the wife of the vendor will not be entitled to her dower in equity.

6thly.

6thly. If a person dies seized in fee, subject to a term of years, if the term be a term in gross for securing the payment of a sum of money, the widow by discharging the money secured by it, or paying one third of the interest, will be entitled to dower.

7thly. If the term be an outstanding satisfied term, she will be also entitled to her dower against the heir. Vide *Butler's Co. Lit.* (208. a.)

It appears, that where the mortgagor has been allowed to continue in possession, the mortgage shall, after a length of time, be presumed to have been discharged; unless circumstances can be shewn sufficiently strong to repel such presumption; as *payment of interest*, and a *demand and promise to pay*, &c.: and as equity will raise this presumption in favour of a mortgagor in possession, *a fortiori*, ought it to be presumed that the mortgagor has conveyed or deserted his equity of redemption, where the mortgage appears to have been in possession a great *length of time*, twenty years or upwards, no interest having been paid,
nor

nor any other circumstance appearing, from which it can be inferred that the mortgage is still subject to redemption. The rule of equity therefore is, that the equity of redemption shall be presumed to be deserted by the mortgagor, after *twenty years* forfeiture, and possession taken by the mortgagee, no interest having been paid in the mean time; unless the mortgagor be capable of producing circumstances to account for his neglect; such as *imprisonment, infancy, coverture*, or by having been *beyond sea*, and not having absconded. *Fonb. Treatise in Equity*, Vol. I. p. 323, *in notis.*

But although it seems agreed that length of time may be pleaded in bar of redemption, yet the authority of the cases in which the defendant has been allowed to take advantage of such circumstance by demurrer, is very much shaken. *Aggas v. Pickerall*, 3 *Atk.* 225. *Edsell v. Buchanan*, 2 *Vez.* Jun. 84.

But where a bill has been brought, and an account decreed within twenty years, a redemption

tion may be decreed upon the foot of that account, *Proctor v. Cowper*, 2 Vern. 377.

So if the mortgagor agreed the mortgagee should enter, and hold till he was satisfied. *Orde v. Hemming*, 1 Vern. 418.

So if an account appear to have been made between the mortgagor and mortgagee within twenty years. *Anon.* 2 Atk. 333.

Or even if the mortgagor appear to have treated the estate as in mortgage; for the rule, proceeding on the notion of a dereliction of the pledge, and the difficulty of making up accounts after a great length of time, cannot apply to cases where the party in possession of the pledge continues to treat it as subject to redemption. *Orde v. Smith. Sel. Ca. Chan.* 9. *Palmer v. Jackson*, 5 Bro. Par. Ca. 194. *Conway v. Shrimpton*, 2 Eq. Ca. Abr. 596, ca. 10. *11 Bro. Parl. Ca.* 309. *Perry v. Marston*, 2 Bro. Chan. Rep. 397. *Trasb v. White*, 3 Bro. Cha. Rep. 289. *Proctor v. Oates*, 2 Atk. 140.

Still

Still less does the rule apply, where the mortgagor continues in possession, *even of a part of the mortgaged premises.* *Rakestraw v. Brewer.* *Sel. Ca. Chan.* 55.

Upon the stat. 4th and 5th *Will. & Mary*, c. 16, which takes away from the mortgagor the right of redemption, if he afterwards mortgage the same premises without communicating by notice in writing the prior incumbrance to the subsequent mortgagee, the following points have been determined.

That it is incumbent on the mortgagor, previous to a second mortgage of his lands, to give the second mortgagee *notice in writing*, under his hand, of all prior incumbrances.

That a mortgage which on the statute becomes irredeemable, although assigned over to another in consideration of what is actually due thereon for principal, interest, and costs, still remains irredeemable in the hands of the assignee, who may

may take advantage of the Statute against clandestine mortgages.

That if a subsequent mortgagee redeem such foreclosing mortgage, he shall hold the estate irredeemable.

That if there are *more* lands in the *second* mortgage than in the first, that is a case omitted in the Statute.

That the adding an acre or two would not except the case out of the Statute, but would be considered as a contrivance to avoid it.

That a mortgagee who claims the benefit of this Statute, must have conducted himself fairly throughout the transaction ; it being intended to recompense honest mortgagees for the trouble, hazard, and charge they may be put unto, and not to cover a fraud, or ill practice, in obtaining a mortgage, or an assignment thereof, or in becoming

becoming a purchaser. *Stafford & al. v. Selby*,
2 Vern. 589. S. C. 1 Eq. Abr. 328. c. 5.

WHERE THERE ARE SEVERAL MORTGAGEES OF THE SAME ESTATE, WHAT REMEDY THEY HAVE AGAINST THE MORTGAGOR, AND AGAINST EACH OTHER—IN WHICH THE DOCTRINE OF TACKING PRIOR AND AFTER SECURITIES TOGETHER IS EXEMPLIFIED.

IF a man by the suppression of truth, or by the suggestion of falsehood, be the cause of prejudice to another, who had a right to full and correct representation of the fact, it is certainly agreeable to the dictates of good conscience, that his claim should be postponed to that of the person whose confidence was induced by his representation.

But where the party to whom the fraud is imputed, was not aware of the treaty in which the fraud was practised, nor in any manner, nor
for

for any fraudulent purpose, confederating with the party, practising the fraud, the above principle does not apply.

Therefore where A lent money to B on mortgage, but before he did so, sent C to inquire of D who had a prior mortgage, whether he had any incumbrance on B's estate, who denied he had any; D by his answer having denied that C told him that A was about to lend B any money, the Lord Keeper, upon appeal, directed an issue at law, to try whether C did or did not communicate such fact to D.

This issue would have been superfluous, if the bare naked falsehood had been a sufficient ground for postponing the demand of D. See *Pasley and Freeman*, 3 T. R. 51. *Fonb. Treat. Eq.*

As to what shall be construed a concealment.

IN the case of *Mocatta v. Murgatrey*, Lord Ch. Cowper held, that where a first mortgagee is witness to a second mortgage, though there be no actual

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actual proof of his knowing the contents thereof, yet, since the presumption is that he might have known them, it shall postpone him.

But none of the cases seem to come up to this point. Vide *Hobbs v Norton*, 1 Vern. 136. *Peter v. Russell*, 1 Eq. Abr. 321. pl. 7. *Head v. Egger-ton*, 3 P. Wms. 280. *Berrisford v. Milward*, 2 Atk. 49. *Anon.* (cited) 1 Vez. 96.

And in *Becket v. Cordley*, 1 Bro. Ch. Rep 353. Lord Ch. *Thurlow* referring to the case of *Mocatta v. Murgatrey*, observed, that " he did not leave it as a case, which he should determine in the same manner, for a witness in practice is not privy to the contents of the deed."

It has also been laid down as an established rule in equity, " that a second mortgagee, who has the title deeds, without notice of any prior incumbrance, shall be preferred, because, if a mortgagee lend money without taking the title deeds, he enables the mortgagor to commit a fraud."

fraud." Per *Buller, J.* in *Goodtitle v. Morgan*, 1 T. R. 762.

The fraud imputed to the first mortgagee by this supposed rule of equity is, the enabling of the mortgagor to practise a fraud upon a third person, by leaving him in possession of what furnishes the best evidence of title; and there are cases to which this rule might be wisely and equitably applied; but to lay it down as applicable to every case, in which the mortgagor appears in possession of the deeds at the time of the second mortgage, were not only to break in upon the authority of many decisions, but also under some circumstances, to endanger the equity which it professes to promote. *Fonb. Treat. Eq.* Vol. I. p. 153.

It would postpone the first mortgagee of an estate held in joint-tenancy, or in common, the joint-tenants being equally entitled to possession of the deeds.

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The *whole* of the premises contained in the deeds must be in the mortgage, though the intent of the parties might extend to only a *particular part* of them; or the mortgagee of the *part* must retain the possession of the deeds which respect the *whole*.

These considerations have induced courts of equity to look to the circumstance under which the mortgagor obtained, or was allowed to retain the title deeds.

And therefore, in the case of *Peter v. Russell*, 1 *Eq. Ca. Abr.* 321, *pl.* 7. 2. 2 *Vern.* 726, it appearing that the mortgagor obtained possession of the title deeds from the first mortgagee upon a reasonable pretence, Lord Cowper dismissed the bill brought by the second mortgagee to postpone the first.

So in *Penner v. Femmet*, MSS. 28th June, 1785, it appearing that the first mortgagee had required, and was assured by the mortgagor, that he had delivered to him all the title deeds, Lord

Ch. Thurlow

Ch. *Thurlow* held, that there must be a *voluntary* leaving of the deeds, to entitle the *second* mortgagee to gain the priority.

So in *Towle v. Rand*, 2 Bro. Ch. R. 650. which was the mortgage of a reversion, Lord *Thurlow*, C. decreed for the first mortgagee.

And in *Plumb v. Flint*, MSS. 3d Feb. 1791, the Court of Exchequer, in a very solemn and most able judgment, held, upon the general question, that the mere leaving the title deeds in the possession of the mortgagor, was *not* of itself a sufficient ground to postpone the first mortgagee. The rule laid down by Lord *Thurlow*, C. may, therefore, be now considered as the rule of equity; viz. that nothing but a *voluntary, distinct, and unjustifiable* concurrence, on the part of the *first* mortgagee to the mortgagor's retaining the title deeds, shall be a reason for postponing his priority.

Whatever may be the value of the estate, it is of great importance to those who lend money upon

upon real security, to be certain that there is no prior mortgage upon the estate, for it has been long settled, that if a third mortgagee, who at the time of his mortgage had no notice of the second, purchases the first mortgage, even pending a bill by the second to redeem the first, both the first and third mortgages shall be paid out of the estate before any share of it can be appropriated to the second; the reason assigned is, that the third, by thus obtaining the legal estate, has both law and equity, which supersede the mere equity of the second. And even Lord Hale held it right, that the third should thus seize what he called *tabula in naufragio*, a plank in the shipwreck, and so leave the second to perish. See 2 Vent. 337. 1 Ch. Ca. 162.

But among mortgagees, where no one has the legal estate, the rule in equity is *qui prior est tempore, potior est jure*. 2 P. Wms.

MORTGAGE MONEY TO WHOM TO BE PAID;
AND OUT OF WHAT FUNDS MORTGAGES
ARE TO BE REDEEMED.

IT has long been settled in equity, that *mortgage money is to be paid, not to the heir but to the executor.*

And this holds, though the mortgage be *in fee*; though the condition be for payment to the mortgagee, his *heirs* or *executors*; though there is no want of assets; and though there be no bond given, or covenant entered into by the mortgagor, for payment of the money; and whether the mortgage be forfeited, or not, at the death of the mortgagee; for equity considers a mortgage as part of the mortgagee's personalty. See the argument of Lord Keeper *Finch*, in *Thornbrough v. Baker*, 1 *Chan. Ca.* 285. and see 2 *Cha. Ca.* 50, 51, 187, 224. 2 *Vent.* 348, 351.

This follows from the principle, that, in equity, the lands are only considered as a pledge, or security

security, for the money lent, and the money is the principal, if not the sole object.

In adopting this rule, courts of equity appear to have been guided by the same reasoning, which, in former times, made courts of law consider the estates of tenant by statute merchant, and tenant by statute staple, merely as *chattel* interests.

These, from their uncertain nature, ought to have been considered as *freehold*; but being, as Mr. J. *Blackstone* observes, a security and remedy provided for personal debts, to which debts the executor is entitled, the law has therefore thus directed their succession: as judging it reasonable, from a principle of natural equity, that the security and remedy should be vested in them to whom the debts, if recovered, would belong. 2 *Black. Com. ch. 10. sec. 5.* Still, however, the mortgage is considered as forfeited by law, and the mortgagor can only recover the mortgaged lands back by the aid of equity.

As it is among the maxims of equity, that whoever claims equity must do equity, and that in payment of debts equality is the highest equity, it has been settled that if the equity of redemption of lands of a mortgagor in fee descends upon the heir, it is equitable assets in his hands; and debts by specialty and simple contract are paid in equal proportion.

But, if the equity of redemption of lands of a mortgagor for years descends upon the heir, it is legal assets, and the debts are then paid according to their legal priority; yet, in this latter case, if the creditor is obliged to pray the aid of equity, the court will direct *simple contract* and *specialty* creditors, notwithstanding the assets are legal, to come in proportionably; and if there is not sufficient to pay all, the loss to fall equally on all. See 29 C. 2. f. 10, 11, 3 and 4 *W & M*. c. 14. *Bennet v. Box*, 1 *Cha Cases*, 12. *Wollenstone v. Croft and Long*, *Ibid* 32. *Trevor v. Perryor*, *Ibid*, 148. *Hexon v. Wytbam*, *Ibid*, 248. *Anonymous*, 2 *Cha. Ca.* 54. *Girling v. Lee*, 1 *Vern.* 63. *Child v. Stephens*, *Ibid*, 101. *Morgan v. Lord Sherrard*,

Sherrard, Ibid, 293. Cole v. Warden, Ibid, 410. Plunket v. Kirk, Ibid, 411. Sawley v. Gower, 2 Vern. 61. Anonymous, Ibid, 405. Wilson v. Fielding, Ibid, 763. Car v. Countess of Burlington, 1 P. Wms. 228. Creditors of Sir Charles Cox, 3 P. Wms. 341, and see 1 Roll. Abr. 920. Hob. 265.

It also follows from the above circumstances of the mortgaged lands being considered in equity as a security or pledge for the mortgage debt, that, after the legal forfeiture it continues as much a debt as before. Hence, in general, the personal estate of the mortgagor is, upon his decease, to be applied in discharge of the mortgage; and this holds equally in favour of the heir and of a general devisee, or *heres factus* *, and of a devisee of particular lands; and whether there is, or is not, a bond or covenant for payment of the money. *Cope v. Cope, 1 Salk. 450. Howell*

* *Heres factus*, or heir by devise, is only a devisee of lands, being made so by the will of the testator, and has no other right or interest than the will gives him. 3 Co. 42. a.

v. Price,

v. Price, Prec. in Chan. 433. Pockley v. Pockley, 1 Vern. 36. Lord Winchelsea, v. Norcliffe, 1 Vern. 485. Bartholomew v. May, 1 Atk. 486. Galton v. Hancock, 2 Atk. 530.

This doctrine has been frequently extended to the case of a *devise of lands in trust to pay off debts*; where (particularly if the personalty is bequeathed to the executor) the courts, notwithstanding an *express devise of a real estate*, for the payment of debts, have directed the *personalty to be first applied* in payment of them. See *Gower v. Mead, Prec. Cba. 2. Dolman v. Smith, Ibid, 256. 2 Vern. 117. Hall v. Brooker, Gilb. Rep. 70. See also Bamfield v. Wyndham, Prec. in Cba. 101. Wainwright v. Benlowe, Gilb. Rep. 12. Stapleton v. Colville, Ca. temp. Talbot, 202.*

So lands *descended* shall exonerate *mortgaged* lands *devised*. *Galton v. Hancock. 2 Atk. 424.*

So *unincumbered* lands, and *mortgaged* lands, both being specifically devised (but expressly "*after payment of all debts,*") shall contribute in
discharge

discharge of such mortgage. *Carter v. Barnardiston*. *P. Wms.* v. 1. 305, and 2 *Bro. Parl. Ca.* 1.

But in all these cases the debt being considered as the *personal* debt of the *testator himself*, the charge on the *real estate* is merely *collateral*.

The rule, therefore, is otherwise where the charge is on the *real estate* principally, although there be a collateral personal security. *Countess of Coventry, v. Earl Coventry*, *P. Wms.* 222, 2 v. *Edwards v. Freeman*, *Ibid.* 437. *Wilf. v. Earl of Darlington*, *P. Wms.* 2 v. 664. n. *Ward v. Lord Dudley*, 2 *Bro. Cha. Rep.* 316.

Or, where the debt (although personal in its creation) was contracted originally by another. *Cope v. Cope*, 2 *Salk.* 449. *Bagot v. Oughton*, 1 *P. Wms.* 347. *Leman v. Newnham*, 1 *Vez.* 51. *Robinson v. Gee*, 1 *Vez.* 251. *Parsons v. Freeman*, *Amb.* 115. *Lacam v. Mertins*, 1 *Vez.* 312. *Perkins v. Bayntun*, *P. Wms.* 2 v. 664. n. *Lawson v. Hudson*, 1 *Bro. Cha. Rep.* 58. *Shafte v. Shafte*, *P. Wms.* 2 vol. 664, note. *Basset v. Percival*, *Ibid.*
Earl

Earl of Tankerville v. Fawcett, 2 Bro. Cha. Rep. 57. Tweedell v. Tweedell, 2 Bro. Cha. Rep. 101, 152. Billingshurst v. Walker, 2 Bro. Ch. Rep. 604.

With respect to the priority of application of real assets, (when the personal estate is either exempt or exhausted) it seems that, 1st. The real estate expressly devised for payment of debts, shall be applied. 2dly. (to the extent of the specialty debts) the real estate descended. 3dly. The real estate specifically devised, subject to a general charge of debts. Galton v. Hancock, 2 Atk. 424. Powis v. Corbet, 2 Atk. 566. Wride v. Clarke, 2 Bro. Cha. Rep. 261, *notis.* Davis v. Topp, 2 Bro. Cha. Rep. 259, *notis.* Donne v. Lewis, 2 Bro. Cha. Rep. 257.

The rules respecting the application of the personal estate in case of the real, as between volunteers (for which see *Howell v. Price*, 1 P. Wms. 294.) as they proceed on the principle, that the primary fund ought, in conscience, to exonerate the auxiliary, consequently can hold only in those cases where the funds in question stand in those

relative

relative situations. See *Evelyn v. Evelyn*, 2 P. Wms. v. 2. 664.

The incumbrance may be in its *nature real*, or may *become so* by the act of the person who has power of charging both funds; or although the land were *auxiliary* only to the personal estate of the *original contractor*, it yet may become the *primary* fund, as between *it* and the personal estate of *any other* person, who may take the land (either by descent or purchase) *subject* to the charge; in all those cases the personal estate is charged (if at all) only as a *surety* for the land, and shall have the same measure of equity as the *land* is intitled to, when it is pledged as a surety for a *personal debt*.

In *Bagot v. Oughton*, land descended to the wife, subject to a mortgage made by her father; on an assignment of the mortgage, the husband covenanted for payment of the money to the assignee;—decreed the husband's estate was not liable to exonerate the mortgaged premises, for the debt was *originally the father's*, and continuing
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to be so, the covenant was an *additional* security for the satisfaction only of the lender, and not intended to alter the *nature* of the debt. *Bagot v. Oughton*, 1 P. Wms. 347.

In *Countess of Coventry v. Earl of Coventry*, (9 Mod. 12.) although the covenantor was the *original contractor*, yet the charge being in its *nature real*, and the covenant only an *additional* security, the land was decreed to bear its burthen. *Countess of Coventry v. Earl of Coventry*, 2 P. Wms. 222. *Edwards v. Freeman*, 2 P. Wms. 435.

In *Leman v. Newnham*, (1 Vez. 51.) the son tenant in fee, on an assignment of the ancestor's mortgage, covenanted with the assignee for payment, yet determined that the personal estate was only *auxiliary*, and both principal and *interest* were charged *primarily* on the land, for although the interest had accrued during the possession of the son, the *interest* must follow the *principal*, and be a charge upon the same fund. So *Lacem v. Mertins*, 1 Vez. 312. In *Robinson v.*

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Gee, 1 Vez. 251, the same principles are laid down.

In *Parsons v. Freeman*, before Lord Hardwicke, 25th October, 1751. A purchased an estate for 90*l.* which was mortgaged at that time for 86*l.* and he covenanted to pay 86*l.* to the mortgagee, and 4*l.* to the vendor. The Court admitted the rules of law abovementioned, but in that particular case, thought that, although the covenant was with the vendor *only*, and the vendee's personal estate therefore not liable in that respect to the mortgage, yet the words were sufficiently strong to shew an intention in the vendee to make it *his personal debt*. *Reg. Lib. B. 1751. fol. 238.*

In *Lewis v. Nangle*, November 7th, 1752, before Lord Hardwicke, Mrs. Nangle was before her marriage with the defendant indebted to sundry persons, and intitled to the inheritance of lands charged with the payment of sundry sums, and before her marriage entered into articles whereby the premises were to be settled to the husband for life, *sans waste*, remainder in like manner to
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the wife—remainder to the issue of the marriage—remainder to the wife in fee: the marriage took effect, and the husband being pressed for payment of the wife's debts, and having also occasion for a further sum of money, they borrowed 1,300*l.* of the wife's sister (the original plaintiff in the cause) and secured it by a mortgage of the wife's estate, and the husband covenanted for payment of the whole money, and also executed a bond conditioned for payment of the money according to the provisos in the mortgage:—subject to this mortgage the lands were settled to the husband for life—remainder to the wife for life—remainder to the issue of the marriage—remainder to the wife's sister (the mortgagee) in fee. Mrs. *Nangle* died without issue; and the present plaintiff was the devisee of the sister, who brought his bill against Mr. *Nangle* for payment of the mortgage money; but the Lord *Chancellor* held, that although part of the money was raised for the husband's use, yet the mortgage being a *single transaction*, he must suppose the intention of the parties to be uniform, and that such intention was to charge the wife's

wife's estate with the whole debt; and his Lordship dismissed the bill so far as it sought to compel the defendant *Nangle* to exonerate the land, but directed him to keep down the interest during his life, *Reg. Lib. B. 1752. fol. 574.*

In *Forester v. Leigh*, 22d and 25th June, 1753, Mr. *Leigh*, the testator, had purchased several estates subject to mortgages, with regard to one of which he entered into a covenant for payment of the mortgage money, *for the purpose of indemnifying a trustee*; and as to another, which was part only of an estate, subject to a mortgage, upon splitting the incumbrance both parties covenanted to pay their respective shares, and indemnify each other—Lord *Hardwicke* thought these covenants would not have the effect of making the mortgages *personal* debts of the testator, they having been entered into for *particular purposes*, and declared his opinion accordingly in the decree. *Reg. Lib. A. 1752, fol. 325.*

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In *Perkyns v. Bayntun*, Sir *Wm. Osbaldiston*, by will of February 5th, 1749, taking notice that his daughter *Catherine* was deaf and dumb, and that *Jane Bayntun* had taken care of her, devised certain real and personal estate to *Jane Bayntun*, her heirs, executors, and administrators, in trust, by sale or felling timber to pay all his debts, and directed that *Jane Bayntun* should receive the rents and produce of his real and personal estate, without account, during his daughter's life, she maintaining his daughter; and after the death of his daughter, he gave all his real and personal estate whatsoever to *Jane Bayntun*, in fee, and appointed her sole executrix. Sir *W. Osbaldiston* died March, 1750, and *Jane Bayntun* proved the will. Sir *W. Osbaldiston*, in his life time, mortgaged part of his estate for securing 1,500*l.* and interest, which remained a charge at his death. *Jane Bayntun* paid off 500*l.*, part of this 1,500*l.* and afterwards borrowed a further sum of 2,500*l.* on mortgage of the estates, which money, in the mortgage deeds, was expressly recited to have been borrowed to enable her to discharge Sir *W. Osbaldiston's* debts. *Jane Bayntun* afterwards

wards died, and on the disposition made by her, and those claiming under her, of the property of Sir *W. O.* this cause was instituted. The cause was first heard before Lord *Bathurst*, on 19th Feb. 1777, when the Court declared that the sum of 1,500*l.* part of the 3,500*l.* was not to be considered as a debt of the said *Jane Bayntun*, but was to remain a charge on the real estate, and directed an account of her personal estate. By an order made on re-hearing on 13th August, 1781, that part of the decree was reversed, and instead thereof it was declared that the said sum of 1,500*l.* appearing to have been a charge made upon the estate of Sir *W. Osbaldiston*, in his life time, and remaining such at his death, was to be considered as a *continued lien* thereon; and that the subsequent charge made on the estate by the said *Jane Bayntun*, being expressed in the mortgage deed to have been *made for the purpose* aforesaid; the same, together with the 1,500*l.* amounting in the whole to 3,500*l.* is to be considered as remaining a charge on the said estates. *Reg. Lib. B.* 1776. fol. 265. and 1780, fol. 365.

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In *Wilson v. Earl of Darlington*, at the Rolls, February, 1785, a real estate charged with the sum of 2000*l.* as a bounty, was holden to be primarily liable, though the personal estate was also subjected by the covenant of the donor. *Duke of Ancafter v. Mayer*, 1 *Bra. Ch. Rep.* 454.

In *Shafto v. Shafto*, before Lord *Thurlow*, February, 1786, the case was this: in March, 1722, *George Delaval* mortgaged lands to *W. C.* to secure payment of 5000*l.* with interest at 5 per cent.; and by will of 22d of May, 1723, devised the lands to his nephew *G. Shafto*, in tail, in remainder to the plaintiff in tail, in remainder over, and died in the month. In 1725, *G. Shafto* suffered a recovery to himself in fee. The mortgagee calling for his money, *W. Gibbons* agreed to advance the 5000*l.* at 4*l.* per cent. on assignment of the mortgage, which was accordingly by indenture of 4th June, 1725, assigned to him, with proviso for redemption, on payment of the principal, and interest at 4 per cent. and *G. Shafto* for himself, his heirs, executors, and administrators, covenanted with *Gibbons*, that

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he, his heirs, &c. some or one of them, would pay to *Gibbons* the said principal and interest, in manner therein mentioned. In 1779, *G. Shafte* agreed to raise the interest to 5 per cent. and by deed covenanted with the mortgagees that estate should remain a security for the 5000*l.* with interest at 5 per cent. and that he, his executors, &c. would pay such interest for the same. In January, 1782, *G. Shafte* died, the interest on the mortgage being then in arrear for about ten months. The bill was brought amongst other things, to have the 5000*l.* and interest paid out of the personal estate of *G. Shafte*, or at least the arrear of interest due at his death, and the additional 1 per cent. charged by the deed of 1779; but the Lord Chancellor was clearly of opinion that the personal estate ought not to discharge the mortgage, the land being the *primary* fund. His Lordship also thought that the interest must follow the nature of the principal, and that the contract for the additional interest *turning upon the same subject*, must be in the nature of a real charge. So *Earl of Tankerville v. Fawcett*, 2 Bro. Cha. Rep. 57.

In *Bassett v. Percival*, at the Rolls, July 21st, 1786, *Matthew Deere*, by will of 15th January, 1746, devised estates to trustees, for a term of 500 years, to raise money for payment of his debts and legacies, in aid of his personal estate; and subject to the term he devised the estates in strict settlement, with the ultimate limitation to his own right heirs, and he gave the residue of his personal estate to his executrix, *Catherine Power*. The executrix applied the personal estate in payment of some of the debts; and all the legacies, except a legacy to herself of 1000*l.* and then died; whilst the limitations in strict settlement subsisted, and after the death of *C. Power*, her representative filed a bill to have a debt due to *C. Power*, and her legacy, raised; and the only person then intitled under the limitations in strict settlement dying, pending the suit, by which event the ultimate limitation to the testator's right heirs took place, a supplemental bill was filed against *Margery Deere*, and *M. D. Percival*, the coheirs of the testator. To stop this suit the coheirs liquidated the demands of the representative of *C. Power* at 207*ol.* and

and gave their joint and several bond for that sum; this demand was afterwards assigned to *Ann Basset*, who also bought in debts to the amount of 3,270*l.* remaining due from the testator *Matthew Deere*; and the coheirs gave another joint and several bond to *Ann Basset* for this sum also; so that *Ann Basset* became the sole creditor on the estate. *Margery Deere* being dead, and a bill being filed by *Ann Basset* for payment of these sums of money, the question was, whether a moiety thereof should be raised in the first place out of the personal estate of *Margery Deere*; or out of the real estate;—His Honor was of opinion, that the real estate was the original debtor, and ought to bear the burthen.

And again in *Tweddell v. Tweddell*, the covenant of indemnity was not sufficient to charge the personal estate.

In *Mattheson v. Hardwicke*, at the Rolls, July 28, 1789, the testator devised an estate to A and B, as tenants in common, in fee, charged with

the payment of his debts and legacies. A paid off all the debts, and all the legacies, except one of 100*l.* for which he gave the legatee his promissory note, and died before he paid it. As to the debts and legacies actually paid by him, it was admitted on the part of his personal representatives, that being tenant in fee of an estate subject to incumbrances, he must be presumed to have paid off those incumbrances with a view of easing the estate from them altogether; but as to the legacy of 100*l.* the promissory note was said to be only a collateral security, and that the devised estate was the primary fund for the payment of it; and his Honor was clearly of that opinion. *Billinghamst v. Walker*, 2 Bro. Chan. Rep. 211. Et vide *Afley v. Earl of Tankerville*, 3 Bro. Cha. Rep. 545. As to the case of the Earl of Belvidere v. Rochfort, 6 Bro. Parl. Ca. 520. Vide *Tweedell v. Tweedell*, sup.

As to the questions, Whether one Term of years can merge in another? And 2dly. Whether two terms of years may not subsist in the same person, where the trusts of the two terms are different? The following elaborate opinion was given by a gentleman of distinguished eminence.

“ **MERGER**, or **EXTINGUISHMENT**, in our law, signifies an effect of consolidation; and is produced either from the meeting of an estate of higher degree, with an estate of inferior degree; or from the meeting of the particular estate and the immediate reversion in the same person. In the first instance, the estate of inferior degree is immediately annihilated, or, in the law phrase, merged or drowned, in that of a superior degree. In the latter instance, the reversion drowns the particular estate, and immediately takes effect in possession. The first instances are applicable to the cases where a base and absolute fee meet in the same person; the latter instances occur where a particular estate, bearing fruits, meets in the same person with the reversion carrying the fruits; this confusion of rights produces a merger;

merger; for a man cannot pay fruits to himself. The first instances have nothing to do with the present case, because it regards only two terms for years, unconnected, which, in an abstract view, are *equal* estates, both ranging under the denomination of chattels.

“ The only question, therefore, in this case, seems to be, whether the union of the first term of 500 years, and the latter term of 1000 years, in the same person, is the *consolidation of a particular estate with a reversion*; for if it be, the consequences apprehended would follow; because, wherever a particular estate and the immediate reversion meet in the same person, there the former will merge in the latter. But the merger in such cases, where both estates are chattels, is not the merger of *chattels* in each other, *qua such*; and does not depend upon the *extent* of interest, or quantity of time, comprized in the terms, but is a merger of the particular estate in the reversion; and turns upon the *relative character* of the two estates to each other; for if the particular estate were a term of 1000 years, and the
reversionary

reversionary estate a term for a day, the effect of merger would not be to give the reversioner a term of 1000 years by the merger of the day in the 1000 years, but it would be to *bring the reversion for one day into possession* by drowning the 1000 years; for it is a principle of law, that a reversion can never merge in the antecedent particular estate, but the particular estate will merge in the reversion: and accordingly it is clearly laid down that the acceptance of a lesser term by the termor from the reversioner, is a merger of the subsisting prior term, *though greater*, *Cro. Eliz.* 302. *Cro. Jac.* 84.; so that it is not the duration of, or quantity of interest in, the terms, but the relative nature of the estates, which in such cases produces a merger.

“ To illustrate further the nature of mergers: it is to be observed, that the mere circumstance of one estate preceding in point of creation, and another succeeding, has nothing to do with the doctrine of mergers, *unless the estates stand in the relation to each other which I have mentioned*, an estate of higher degree will not merge in an estate

estate of a lower degree, though the latter commences at a later period : thus, if an estate for life be granted to A, remainder to B for years, and A grant his estate to B, the estate for life will not merge in the estate for years, because an estate for life will not drown in a term for years. *Perk.* 589. 10 *Co.* 48 b.

“ And it seems equally clear, that equal estates will not drown in each other. Accordingly it is stated as an axiom, *Viner, Tit. Merger*, 361. A 7. “ *that equal things cannot drown one another.*” And it was unanimously agreed *per totam curiam*, 1 *Roll. Rep.* 178, that a tenancy, after possibility of issue extinct, was not a larger estate (*secundum magnum et parvum*, as *Coke* says) than an estate for life, and therefore in respect of largeness, the one could not drown in the other.

“ The last principle is applicable to terms. Thus it is said by *Hanam* (a judge) on the case put of a lessee for twenty years making a lease for ten years, “ That the lessee for ten years could not surrender ; for one term cannot merge in

in another." And *Anderson*, C. J. said that by the opinion of them all, "the lessee for ten years cannot surrender." *Perryu v. Allen, Owen*, 97.

"And it is reported in the same case, *Cro. Eliz.* 173, that all the judges held that the second lessee could not surrender to the first lessee; "for ten years cannot be drowned in twenty." And in the same case, 1 *Leon.* 303, it is reported that it was the unanimous opinion, that one termor cannot surrender to another termor. The principle, that equal things cannot drown one another, is also laid down, *Perk. sec.* 586. As if a man enfeoff's T. S. and T. K. of land to hold to them and the heirs of T. K. and T. S. surrenders to T. K. the surrender is void; and one reason given is that T. S.'s estate cannot drown in the estate of T. K. for either of them hath an estate of freehold in possession.

"All the cases of this nature, I am aware of, on merger, turn upon the gift that the transaction is *first* a surrender, and then, in consequence of union and consolidation, a merger.

Now

"Now it seems that to a surrender *three things* are requisite; first, an actual surrender in him who surrenders; secondly, an actual remainder, or reversion in him to whom the surrender is made; thirdly, consent and agreement between the parties. No surrender can be, unless these circumstances concur, *Owen* 97. Again, *Perk. sec.* 584.

"No surrender can be made but by him who
 "has a particular estate for life or years, to him
 "who has the immediate remainder or reversion,
 "where the estate in remainder or reversion
 "is such an estate, wherein the particular estate
 "may be drowned."

"But there is a case, *Dyer*, 112, pl. 49, which proves that the principal case is not of this description. A, owner of the fee, grants a lease to B for ten years, to commence immediately, and then grants a term to C for ten years, to commence a short time after; and then the first termor purchases the fee simple; *his term will drown*. This proves that the *second term carries no interest* in the reversion; for if it did, it would be an *intermediate interest* therein."

in *, *between* B's term for years, and A's reversion, and consequently prevent the merger. Another consequence also follows, viz. that B could not surrender to C, or *vice versa*, because their interests are not in the relations of *particular estate and remainder or reversion*.

" See also *Gurney v. Suglers*, 3 Leon. where all the argument turns upon its being, as between the surrenderor and surrenderee, *a particular estate and a reversion*.

" Now, to apply the above observations to the present case—the father, by settlement, creates a term for years, to secure younger children's portions, remainder in strict settlement. The son afterwards acquires the fee simple by a recovery, and grants a term for 1000 years, to secure a mortgage. These terms, as between

* This distinction seems to turn on, whether it be a grant of the reversion for years, or a term of years out of the reversion.

themselves,

themselves, and as between the termors, seem to me to be in the precise condition as the terms in the before mentioned case from *Dyer*. The termor for 500 years might surrender his term to the owner of the fee, and it would merge; if so, the latter term *carries not the reversion*. It is not a grant of the reversion for years; and if it does not carry away the reversion, the meeting of these two terms will *produce no surrender in law*, and consequently no merger. This seems a necessary conclusion from the authorities I have mentioned, particularly *Perkins*, 586, which seems to me a clear authority, that equal things will not merge—Freeholds will not, because equal—the same principle applies to chattels.

“ Indeed, I have met with *one dictum*, that seems contrary; and that is, words put into the mouth of *Popham, J.* in the case of *Hughes v. Robotham*, as reported *Cro. Eliz.* 303, where he says, “ It is clear that he which has an estate “ for ten years may surrender to him that has an “ estate for twelve years, and the estate is drown- “ ed, and the other shall come in possession;

“and there is no doubt but that a surrender to
 “him that has a greater estate for years is good,
 “as to him that has an estate for life.” But
 this case is better reported in *Popbam*, 30, where
 he states his own argument, and there *Gaudy* says,
 “That he who has ten years *in possession* may well
 “surrender to him who has more years, as
 “twenty years *in reversion*, for the lesser may
 “surrender to the greater term;” to which *Pop-*
bam and *Fenner* agreed; and every proposition
 stated by *Popbam* and the Court, turns upon the
 point, of the one term being the particular
 estate, and the other the reversion; in which
 case the particular estate, however large, will
 drown in the reversion however small, if they
 are united.

“Many other cases occur respecting surren-
 ders, on the ground that the acceptance of a les-
 ser term from the grantor, by the termor, is a
 surrender and consequent merger of the greater
 term; but these depend upon the rule, that
 “quando aliquis per chartam aliquid accipit,
 “omnia fecisse videtur quo non potuit.”

And

And the case of *Davison v. Stanley*; *Burr. Rep.* 2210, is a criticism upon this rule. But these cases do not affect the present question.

Upon the whole, therefore, I see no reason to doubt, but that the terms in question are both subsisting terms, and that the 300 years term will be an effectual bar to Mrs. L—'s dower.

Many other cases occur respecting future interests, on the ground that the acceptance of a term from the grantor, by the tenant, is a surrender and consequent merger of the grantor's term; but these depend upon the rule, that "quod aliquid per chartam aliquid accipit, non potest."

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OF FORECLOSURE.

IN order to foreclose the equity of redemption upon mortgages, the mortgagee who is desirous to bar it, brings his bill in equity for that purpose; praying a decree for sale of the estate, if reversionary, or, if in possession, by calling upon the mortgagor in court, to redeem his estate presently, or, in default thereof, to be for ever foreclosed of his equity of redemption, which the court will order and decree in convenient time.

Although a court of equity cannot shorten the time of payment of the mortgage money, where it is limited by express covenant and agreement of the parties; yet it may prolong the same; and then, upon non-payment, the practice is, to foreclose the equity of redemption of the mortgagor, and to make the estate absolute in the mortgagee. *Bonham v. Newcomb*, 2 Vent. 365. 1 Vern. 232.

H

After

After a bill to foreclose is filed, the answer put in, and the usual decree obtained in favor of the mortgagee, a Master in Chancery is to certify what is due for principal, interest, and costs: which is to be paid at a time prefixed by the decree; whereupon the premises are to be re-conveyed to the mortgagor, or, in default thereof, he is to be utterly excluded from all equity of redemption, and to convey the premises to the mortgagee absolutely.

On a decree to foreclose at a period certain, the computation of time must be according to calendar, and not according to lunar months.

Barnard, 324. 2 *Eq. Ca. Abr.* 605. p. 38.

The time of payment limited on a decree for foreclosure, may be renewed several times, upon special circumstances. *Vid. Barnard. Rep.* 221. 2 *Eq. Abr.* 605. 37. 1 *Cb. Ca.* 63. 4. *Cocker v. Bevit*, 1 *Rep. Ch.* 253. *Isnoord v. Claypool*, 1 *Ch. Rep.* 262.

On a bill to foreclose, the title of the mortgagee

gagee cannot be investigated; but he will be left to pursue legal means to establish it. 2 *Cha. Ca.* 344.

A mortgagee may bring an ejectment at law, at the same time that he hath a bill of foreclosure depending; for he will not be prevented from pursuing all his remedies for recovery of his debt. *Booth v. Booth*, 2 *Alk.* 344.

And, as in a late case, where a mortgagee, getting possession of the estate, sued at law on the covenant for non-payment, and brought his bill to foreclose; this was determined to be regular, and the court would not stay the proceedings at law, unless the defendant brought in the money. *Rees v. Parkinson*, 2 *Anstruth. Rep. Excheq.* 497.

But special circumstances may arise, which will take the case out of the common rule, and induce the court to grant an injunction to stay proceedings upon the ejectment.

As, where a bill was brought by the plaintiff against the defendant for an account of the rents and profits of an estate, during the time he was guardian to the plaintiff's brother, and for an injunction to stay proceedings upon an ejectment for the possession thereof, it being mortgaged to him; the court because he was going to foreclose the equity of redemption, it being entangled with an account of the personal estate, agreed to grant an injunction, provided the plaintiff consented to give security to redeem. *Ibid.*

If a feme, before her marriage, or the ancestors of a feme, mortgage lands, and the equity of redemption thereof comes to a feme covert; upon a bill brought by the mortgagee to foreclose, the feme is liable to be absolutely foreclosed, though during the coverture, and shall have no day given to her, or her heirs, to redeem, after the coverture shall be determined. *Mallack v. Galton, 3 Peere Wms. 352.*

To a bill by the widow (in the last case) to set aside a decree of foreclosure, and to be let in

to redemption, the mortgagee pleaded the proceedings and decree in the former cause, by which it appeared, that the present plaintiff, while co-defendant, had joined with her husband in a surrender of the copyhold estate in question, which was settled upon her in jointure, and had been foreclosed; and the plea was allowed. *Ibid.*

In a foreclosure against an infant, though he has six months after he comes of age to shew cause, &c. yet he cannot travel into the account, nor even redeem, but only shew an error in the decree. *Ibid.*

In the case of a mortgage of money in the stocks, no decree of foreclosure is necessary. And the circumstance of the stock having increased in value, which is merely accidental, will be no inducement to a court of equity to decree a redemption. *Lockwood v. Ewer*, 2 Atk. 308.

So, where one possessed of an exchequer annuity for 99 years, borrowed money upon it, and for securing

securing the money, there was an absolute transfer of the annuity, but with a defeazance, that if the money were paid at such a day, the assignment should be void. The money was not paid at the day; upon which the lender frequently desired the money, and gave notice that he would sell, and appointing a time for that purpose, desired the borrower to be present, to see that the annuity was sold at the full value.

The borrower, by letter, desired that the lender would stay a week longer before he sold, which was also complied with; and then the lender, dying suddenly, the defendant his administrator, sold the annuity at the exchange, by a sworn broker, for the full value that those annuities then sold for, and which was less than what the money due to the defendant amounted to.

These annuities afterwards rose in value; whereupon the mortgagee brought a bill to redeem, or to compel the defendant to purchase another annuity on the same fund, and of the same yearly value, to be transferred to the mortgagor,

gagor, on his payment of the principal and interest.

A decree was made by Lord Chancellor Harcourt, in favor of the plaintiff. From which decree, an appeal was brought in the House of Lords, where it was insisted, that these exchequer annuities, as well as stocks, were usually sold at the exchange, and that this was but as a pawn; and though there was no express power to sell in the defeazance, yet by the mortgagor's letter, it was plainly submitted to, when the mortgagor desired the sale might be deferred for a week; that the convenience of those securities, among merchants, was, that after the day of payment passed, they were taken to be ready money; and that it would be infinitely troublesome, and dilatory, if there could be no sale of such annuities thus pledged, without a decree of foreclosure; that this would set aside several sales that had been made in the like cases, and occasion multiplicity of suits; that the present case was the stronger, it being that of an administrator, who was obliged to dispose of the

affects of the intestate to pay his debts and legacies. Wherefore the former decree was reversed by the Lords. *Tucker v. Wilson*, 1 *Peere Wms.* 262. 1 *Bro. Parl. Ca.* 494.

If there be several mortgagees of an entire thing mortgaged, they must all be made parties to the bill of foreclosure. This was held to be necessary, in the case of *Lowe v. Morgan*, *Brown's Rep. Cha.* 368.

And, if two persons, being mortgagees, foreclose the mortgagor, the mortgaged estate shall be divided between them, because their intent is presumed to have been, that it should be so divided. 2 *Vez.* 158.

If there be several derivative mortgagees, they must all be made parties to a bill to foreclose, in order that there may not be a multiplicity of suits. *Hobart v. Abbot*, 2 *P. Wms.* 643.

If there be any unfair conduct in the mortgagee, the court will open a foreclosure. Vid.

Soleby

Soley v. Salisbury, 9 Mod. 153. Sc. 2 Eq. Ca.
Abr. 2600. p. 25.

And a decree to foreclose, though made absolute, signed and inrolled, is no plea to redeem, if surreptitiously procured. *Lloyd v. Mansell*, 2 P. Wms. 74. So, *Richmond v. Tayleur*, 1 P. Wms. 737. *Galley v. Baker*, Ca. temp. Talb. 201. *Sheldon v. Fortescue*, 3 P. Wms. 111.

A decree for foreclosure will not be opened in favor of a mere volunteer; for a mortgagee is a purchaser, and so hath equal equity with a volunteer, and an absolute estate, in law, by the foreclosure. 1 Eq. Abr. 317. 4.

A mortgagee may, after foreclosure, proceed on his bond, or other collateral securities. See *Tooke v. Hartley*, 2 Bro. Cha. Rep. 126.

A decree of foreclosure will not be set aside, after twenty years, for matter of form only; not even although the estate become of considerably more value than the money lent thereon:

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but

APPENDIX

but a demurrer to such bill will be good. See
Jones v. Kenrick, 15 *Vin. Abr.* 470. *Plowd.* 8. 112
Eq. Abr. 602. *Ca.* 31.

And a decree for foreclosure, though made absolute, signed and enrolled, is no plea to redemption. Intentionally procured. *Lord v. Mansell*, 2 P. Wms. 74. 80. *Richmond v. Parker*, 1 P. Wms. 137. *Gall v. Baker*, Ct. temp. Popham. *Sophon v. Fortescue*, 3 P. Wms. 111.

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APPENDIX

APPENDIX.

MORTGAGE by Lease and Release of Lands and Hereditaments, for securing £ 10,000, 3 per cent. consolidated Bank Annuities, with Interest in the mean time equivalent to the Dividends.

THIS INDENTURE, made the 29th day of September, in the 36th year, &c. and in the year of our Lord 1796, between *Long* of the first part, *Dale*, (a trustee for the said *Long*), of the second part, *Webb* of the third part, and *Hill* of the fourth part: *Whereas* by indentures of lease and release, bearing date respectively the 6th and 7th days of May 1796; the release being of nine parts, and made or expressed to be made between *Short* of the first part, *Goldsmith* and *Mary* his wife on the second part, *Adams*, Gent. of the third part, *Jones*, Esq. of the fourth part, *Swift*, Esq. of the fifth part, *Squires*, Gent. of the sixth part, the said *Webb* of the seventh part, the said *Dale* of the eighth part, and the said *Long* of the ninth part. And by a common recovery in pursuance of a covenant, or agreement for that purpose contained in the said indenture of release, the buildings, lands, tenements and hereditaments, hereinafter particularly mentioned and described, and intended to be hereby granted and released, with their appurtenances, were conveyed, limited, and assured to the only use and behoof of the said *Long* and *Dale*, and the heirs of the said *Dale*, nevertheless as to the estate of the said *Dale* and his heirs therein, in trust for the said *Long*, his heirs and assigns for ever.

And whereas the above named *Hill* being possessed of £ 10,000 3 per cent. consolidated Bank annuities, did upon the request of the said *Long* and *Webb*, and for the

Parties.

Recital of conveyance to mortgagor of hereditaments hereby mortgaged.

And that mortgagee having £ 10,000 3 per cent. consolidated bank annuities, at the

A

accommodation

request of *Long* and *Webb* transferred the same to *Long*.

And that to induce *Hill* to make such transfer, said *Long* and *Webb* executed a bond, conditioned for placing the same.

accommodation of the said *Long*, transfer the same to the said *Long*, as the said *Long* doth hereby admit and acknowledge, and as will appear by a reference to the books kept by the Governor and Company of the Bank of England, for entering the transfers of the said stock.

And whereas, in order to induce the said *Hill* so to do, the said *Long* and (at his request), the said *Webb* proposed and agreed to and with the said *Hill*, to secure to him by their joint and separate bond or obligation, the transfer of a like sum of £ 10,000 3 per cent. consolidated bank annuities, and the payment of an annual sum equal to, and as, and for the dividends thereof in the mean time; and in pursuance of the said agreement, the said *Long* and *Webb* have this day executed and given to the said *Hill*, a bond or obligation in writing, bearing even date with these presents, and are thereby jointly and separately become bound to him in the penal sum of £ 20,000, with a condition written under the said bond or obligation, for making void the same if the said *Long* and *Webb* or either of them; their or either of their heirs, executors, or administrators, shall on or before the 25th day of March, which will be in the year 1797, transfer or cause to be transferred the sum of £ 10,000 3 per cent. consolidated bank annuities unto the said *Hill*, his executors, administrators, and assigns; and in the mean time pay to him or them in lieu of, and as and for the dividends thereof, such sum or sums of money as he the said *Hill*, his executors, administrators, or assigns, would have been entitled to receive, as for the dividends or annual produce of the said sum of £ 10,000 3 per cent. consolidated bank annuities.

Now this indenture witnesseth, that in pursuance and further performance of the said agreement, and for and in consideration of the sum of £ 10,000 3 per cent. consolidated bank annuities, transferred to the said *Long* as herebefore mentioned; the receipt and transfer whereof, he the said *Long* doth hereby acknowledge, and in consideration of 10s. of lawful, &c. to the said *Dale* in hand paid by the said

The indenture therefore witnesseth, That

Date by the direction of *Long*

APPENDIX.

faid *Hill*, at or before the sealing and delivery of these presents; the receipt whereof is hereby also acknowledged: He the said *Dale* at the request and by the direction of the said *Hill*, (testified by his being a party to, and sealing and delivering these presents), *hath* bargained, sold, and released; and by these presents *doth*, &c. And the said *Long hath* granted, bargained, sold, aliened, released, ratified and confirmed, and by these presents *doth*, &c. unto the said *Hill*, (in his actual possession now being by virtue of a bargain and sale, &c.) and to his heirs, *All those* buildings, (describe parcels), and all houses, &c. and all the estate, &c. *To have and to hold* the said buildings, lands, and all and singular other the premises hereby granted and released, or expressed and intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said *Hill* and his heirs, (subject to the payment of one annual sum or rent of £——); to the only proper use and behoof of the said *Hill*, his heirs and assigns for ever. *Subject* nevertheless to the proviso for redemption hereinafter contained.

Provided always, and it is hereby agreed and declared between and by the parties to these presents, that if the said *Long* and *Webb* or either of them, their or either of their heirs, executors or administrators, shall on or before the said 25th day of March, which will be in the year of our Lord 1796, transfer or cause to be transferred £10,000 3 per cent. consolidated bank annuities unto the said *Hill*, his executors, administrators or assigns, or to such other person or persons as he or they shall by writing under his or their hand or hands, direct or appoint: And also, if the said *Long* and *Webb*, or either of them, their or either of their heirs, executors or administrators, shall in the mean time, and until the said sum of £10,000 3 per cent. consolidated bank annuities shall be so transferred as aforesaid, well and truly pay, or cause to be paid unto the said *Hill*, his executors, administrators or assigns in lieu of the dividends thereof, such sum or sums of money as

releases, and that *Long* confirms

the premises, to hold,

(subject to a rent)

to *Hill* in fee,

Proviso for redemption on *Long's* and *Webb's* transferring £10,000 3 per cent. consols to *Hill*.

And that, if they or either of them shall in the mean time, and until the bank annuities shall be transferred, pay to *Hill* in lieu of the dividends *Hill* would have been entitled to receive

APPENDIX.

as the produce
of the said
£10,000 3 per
cents;

then *Hill* will
at the costs of
Long reconvey

the premises
to *Long* or such
other person as
he shall ap-
point,

free from the
incumbrances
of *Hill*.

Covenant from
Long that he
will transfer to
Hill £10,000
stock, and pay
interest equal
to the divi-
dends in the
mean time.

the said *Hill*, his executors, administrators or assigns would have been entitled to receive, as or for the dividends or annual produce of the said sum of £10,000 3 per cent. consolidated bank annuities, in case the same bank annuities had continued standing in his or their name or names, for his or their own proper use or benefit, at such time or times, in such shares and proportions, and in such manner, as the same dividends and annual produce would have been payable: *Then* and in that case, he the said *Hill*, his heirs or assigns, shall and will upon the request, and at the costs and charges of the said *Long*, his heirs, executors, administrators or assigns, reconvey or cause to be reconveyed, all and singular the said, &c. and all and singular other the premises hereby granted and released, with their and every of their appurtenances, unto the said *Long*, his heirs and assigns, or to such other person or persons, or in such other manner as the said *Long*, his heirs or assigns shall direct, free from all incumbrances made, done or committed, or to be made, done, or committed by the said *Hill*, his heirs or assigns, or of or by any other person or persons, claiming or to claim, by from or under him them or any of them, any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding.

And the said Long doth for himself, his heirs, executors, and administrators, covenant promise and agree with and to the said *Hill*, his executors, administrators, and assigns, that he the said *Long*, his heirs, executors, administrators or assigns, or the said *Webb*, his heirs, executors or administrators, shall and will transfer unto the said *Hill*, his executors, administrators or assigns, the sum of £10,000 3 per cent. consolidated bank annuities, upon or before the said 21st day of March, in the said year 1796, and in the mean time shall and will well and truly pay, or cause to be paid unto the said *Hill*, his executors, administrators or assigns, an annual sum equal to the dividends thereof in manner aforesaid, according to the true intent

APPENDIX.

intent and meaning of these presents. [Here followed a covenant from *Dale* (the trustee), that he had done no act to incumber.]

Covenant against incumbrances by *Dale*.

And the said *Long* doth for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said *Hill*, his heirs and assigns, by these presents, in manner following, (that is to say), that they the said *Long* and *Dale* now have in themselves, or one of them hath in himself good right, full power, and lawful and absolute authority, to grant release and confirm the hereditaments and premises hereinbefore mentioned, to be hereby granted, released and confirmed respectively; and every of them, and every part thereof respectively, unto and to the use of the said *Hill*, his heirs and assigns in manner aforesaid, according to the true intent and meaning of these presents.

Covenant from *Long* for the title,

And that, if the said sum of £10,000 3 per cent. consolidated bank annuities shall not be replaced in manner aforesaid, or if default shall happen to be made in the payment of the annual sum hereinbefore mentioned, or any part thereof, contrary to the true intent and meaning of these presents; it shall and may be lawful to and for the said *Hill*, his heirs and assigns, peaceably and quietly to enter, into, have, hold, use, occupy, possess and enjoy the hereditaments and premises hereinbefore mentioned, to be hereby granted and released, and to receive and take the rents, issues and profits thereof, to and for his and their own use and benefit: and that free and clear, and freely and clearly, and absolutely acquitted, exonerated and discharged or otherwise by the said *Long*, his heirs, executors or administrators, well and sufficiently saved, protected, kept harmless, and indemnified of, from and against all, and all manner of former and other gifts, grants, bargains, sales, jointures, uses, trusts, wills, intails, annuities, rents and charges, rents, seck and arrears of rent, fines, issues, amerciaments, statutes, recognizances, judgments, executions, seizures, sequestrations and other estates, titles, troubles, charges and incumbrances whatever, (save and except

and that if the stock is not replaced and the interest paid, *Hill* may enter and hold the premises,

free from incumbrances.

except

except the said annual sum or rent hereinbefore mentioned.)

And in default
for further as-
surances.

And if the said sum of £10,000 3 per cent. consolidated bank annuities, shall not be replaced or transferred unto the said *Hill* as hereinbefore mentioned; or, if default shall happen to be made in the payment of the said annual sum, contrary to the true intent and meaning of these presents: then, and in such case, he the said *Long*, his heirs and assigns, and all and every other person and persons whomsoever, having or lawfully claiming, or who shall or may have, or lawfully claim any estate, right, title or interest, of in or to the hereditaments and premises hereinbefore mentioned to be hereby granted and released, or any part thereof, shall and will from time to time, and at all times upon the request of the said *Hill*, his heirs, executors, administrators or assigns, but at the costs and charges of the said *Long*, his heirs and assigns, make, do, acknowledge, levy, suffer and execute, or cause and procure to be made, done, acknowledged, levied, suffered and executed all and every such further, and other lawful and reasonable act and acts, deeds, matters, things, devises, conveyances and assurances in the law whatsoever, for the further and better more perfectly and absolutely granting, conveying, assuring and confirming all and singular the hereditaments and premises hereinbefore mentioned to be hereby granted and released, with their and every of their appurtenances unto and to the use of the said *Hill*, his heirs and assigns, freed and absolutely discharged from the aforesaid proviso for redemption of the said premises; and from all power, right, and equity of redemption whatsoever, as by the said *Hill*, his heirs or assigns, or his or their counsel in the law shall be devised, or advised and required. *Provided also*, and it is hereby agreed and declared, that until default as aforesaid shall be made contrary to the true intent and meaning of these presents, all and singular the hereditaments hereinbefore mentioned to be hereby released, shall and may be peaceably and quietly

Proviso for
quiet enjoy-
ment by *Long*
until default.

quietly holden and enjoyed; and the rents, issues and profits thereof, had, received and taken by the said *Long*, his heirs and assigns, without any let, suit, trouble, denial, eviction or interruption of from or by the said *Hill*, his heirs or assigns, or any person or persons whomsoever claiming or to claim, by from or under, or in trust for him them or any of them, In witness, &c.

A joint and several Bond for securing the transfer of £10,000 3 per cent. consolidated Bank Annuities, and Interest in the mean time equivalent to the Dividends.

[N. B. The Bond referred by the foregoing Deed.]

KNOW ALL MEN by these presents, that we *Long* and *Webb*, are held and firmly bound to *Hill* in the penal sum of £20,000, of good and lawful money of Great Britain, to be paid to the said *Hill* or his certain attorney, executors, administrators, or assigns. For which payment to be well and faithfully made, we bind ourselves, our heirs, executors and administrators, and every of them; and each of us binds himself, his heirs, executors, and administrators, and every of them firmly by these presents, sealed with our seals, dated this 29th day of September, in the 37th year, &c. and in the year of our Lord 1796. Whereas the above named *Hill*, being possessed of the sum of £10,000 in the stock, commonly called the three per cent. consolidated bank annuities; did lately, and at the special instance and request of the above named *Long* and *Webb*, and for the accommodation, use and benefit of him the above named *Long*, transfer the said sum of £10,000 3 per cent. consolidated bank annuities to the said *Long*, as the said *Long* doth hereby admit and acknowledge, and as will appear by a reference to the books kept by the

Governor

Governor and Company of the Bank of England, for entering the transfers of the said stock. *And whereas*, in order to induce the said *Hill* to transfer the said sum of £10,000 3 per cent. consolidated bank annuities in manner hereinbefore mentioned, the said *Long* and the above named *Webb* did offer, propose and agree to and with the said *Hill*, to secure to him by their joint and several bond or obligation, the transfer of a like sum of £10,000 3 per cent. consolidated bank annuities, and the payment of an annual sum equal to, and as or for the dividends thereof in the mean time. *Now therefore the condition* of the above written bond or obligation is, that in case the said *Long* and *Webb* or either of them, their or either of their heirs, executors or administrators, shall on or before the 25th day of March, which will be in the year of our Lord 1797, transfer or cause to be transferred, the sum of £10,000 consolidated bank annuities unto the said *Hill*, his executors, administrators or assigns, or to such other person or persons as he or they shall by writing under his or their hands, direct or appoint. *And also*, if the said *Long* and *Webb* or either of them, their or either of their heirs, executors or administrators shall in the mean time, and until the said sum of £10,000 3 per cent. consolidated bank annuities shall be so transferred as aforesaid, well and truly pay or cause to be paid to the said *Hill*, his executors, administrators or assigns, in lieu of the dividends thereof, such sum or sums of money as the said *Hill*, his executors, administrators or assigns would have been entitled to receive, as or for the dividends or annual produce of the said sum of £10,000 3 per cent. consolidated bank annuities, in case the same bank annuities had continued standing in his or their name or names, for his or their own proper use and benefit, at such time or times, in such shares and proportions, and in such manner as the same dividends and annual produce would have been payable. *Then* and in such case, the above written bond or obligation shall be absolutely null and void to all constructions

and

and purposes whatever, otherwise to remain in full force and virtue.

Release in Fee by way of Mortgage.

THIS INDENTURE, made, &c. between *Lock* of the one part, and *Newton* of &c. and *Maria Grant*, widow, of the other part: *witnessth*, that in consideration of the sum of £—— of lawful money of Great Britain, by the said *Newton* and *Maria Grant*, to the said *Lock* in hand well and truly paid at or before the sealing and delivery of these presents; the receipt of which the said *Lock* doth hereby acknowledge, and from the same and every part thereof, doth acquit, release, exonerate, and for ever discharge the said *Newton* and *Maria Grant*, and each of them, their and each of their heirs, executors, administrators and assigns for ever by these presents. He the said *Lock* hath granted, bargained, sold, aliened, released and confirmed: and by these presents doth grant, bargain, sell, alien, release and confirm unto the said *Newton* and *Maria Grant*, (in their actual possession now being by virtue of a bargain and sale to them thereof, made in consideration of 5s. by the said *Lock*, by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring of leases into possession), and their heirs; *All*, &c. (parcels.)

And the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of all and singular the said premises hereby released or intended so to be. And all the estate, possibility, proper

The parties.

The consideration.

The grant.

Bargain and sale recited.

Parcels.

proper claim and demand whatsoever of the said *Lock*, of, in, to, from, out of and upon the premises hereby released or expressed or intended so to be.

Habendum

to mortgagees
in fee redeema-
ble of Substanti

Proviso for re-
demption.

To have and to hold the said manor, messuages, lands, tenements, hereditaments, and all and singular other the premises hereby released, or expressed and intended so to be, and every of them, and every part and parcel thereof, with their appurtenances, unto the said *Newton* and *Maria Grant*, their heirs and assigns, to the only proper use and behoof of the said *Newton* and *Maria Grant*, their heirs and assigns for ever. But *subject* to the proviso condition covenant and agreement hereinafter contained, for the redemption of the same premises.

Provided always, and it is hereby agreed and declared between and by the said *Lock*, and the said *Newton* and *Maria Grant*; and the true intent and meaning of them, and of these presents nevertheless is, that if the said *Lock*, his heirs, executors or administrators, shall and do well, and truly pay or cause to be paid to the said *Newton* and *Maria Grant*, their executors, administrators or assigns, the sum of £—— of lawful money of Great Britain, and the sum of £—— of like lawful money, as and for one year's interest for the same at the rate of £5 for £100 for a year, making together the sum of £—— in the parts, shares or proportions, and on or at the days and times hereinafter mentioned; that is to say, the sum of £—— part thereof, (being half a year's interest for the said sum of £—— at the rate aforesaid), on the third day of May next ensuing the date of these presents, which will be in the year of our Lord 1798; and the sum of £—— residue thereof, (being the whole of the said principal sum of £3000, and another half-year's interest for the same at the rate aforesaid, on the 3d day of November then next following, which will be in the said year 1798, without any deduction or abatement whatsoever out of the same, or any part thereof, for or in respect of any taxes, charges, rates, assessments, payments or impositions, taxed,

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taxed, charged, assessed or imposed, or to be taxed, charged, assessed or imposed on the said manor, hereditaments and premises hereinbefore granted and released, or mentioned or intended so to be, or upon the said sum of £——, or the interest thereof, or any part thereof respectively, or upon the said *Newton* and *Maria Grant*, or either of them, their or either of their heirs, executors, administrators or assigns, for, upon account, or in respect of the said manor, hereditaments and premises, or any of them, or of the said sum of £3000, or the interest thereof, or any part thereof respectively, by authority of parliament or otherwise howsoever; or for, upon account, or in respect of any other act, matter, cause or thing whatsoever. Then and in such case, they the said *Newton* and *Maria Grant*, their heirs or assigns, shall and will at any time after such payment shall be made as aforesaid, upon the request and at the costs and charges of the said *Lock*, his heirs or assigns, reconvey the said manor, hereditaments and premises hereby granted, and released, or mentioned or intended so to be, with their appurtenances, unto the said *Lock*, his heirs or assigns, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made done or committed by the said *Newton* and *Maria Grant*, or either of them, their or either of their heirs, executors, administrators or assigns, or any of them, so as for the doing thereof, the said *Newton* and *Maria Grant*, or either of them, their or either of their heirs, executors, administrators or assigns, or any of them, be not compelled or obliged to go or travel from the place or places of his, her, their or any of their usual abode or dwelling.

And the said *Lock* doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said *Newton* and *Maria Grant*, their executors, administrators and assigns, that he the said *Lock*, his heirs, executors or administrators, shall and will well and truly pay or cause to be paid unto the said *Newton* and *Maria*

Mortgagor covenants to pay the money.

That he is
seized in fee.

And that he
has good right,
&c. to grant.

And that in de-
fault of pay-
ment, mortga-
ges may enter
and enjoy the
premises.

Maria Grant, their executors, administrators or assigns, the afore said sum of £—, and the interest thereof, in the parts, shares or proportions, and on or at the days or times in the afore said proviso or agreement appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents. And the said *Lock* doth for himself, his heirs, executors and administrators, covenant, promise, grant and agree to and with the said *Newton* and *Maria Grant*, their heirs and assigns, by these presents, in manner following: (that is to say,) that he the said *Lock* is, at the time of the sealing and delivering of these presents, lawfully and rightfully seized of, or intitled to a good sure absolute and indefeazible estate of inheritance in fee simple, of and in all the said manor, hereditaments and premises hereby granted and released, or mentioned, or intended so to be, with their appurtenances, without any condition, trust, power of revocation, or limitation of use or uses, or any other restraint, cause, matter or thing whatsoever, to alter, change, charge, incumber, lessen, determine, defeat or make void the same estate. And that the said *Lock* now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release and convey all the said manor, hereditaments and premises hereby granted and released, or mentioned or intended so to be, with their appurtenances, unto and to the use of the said *Newton* and *Maria Grant*, their heirs and assigns in manner afore said, according to the true intent and meaning of these presents. And also, that if default shall be made in payment of the said sum of £— or the interest thereof, or any part thereof respectively, contrary to the afore said proviso or covenant for payment of the same, and the true intent and meaning of these presents: then and in such case, it may and shall be lawful to and for the said *Newton* and *Maria Grant*, their heirs or assigns, at any time or times thereafter, into and upon all and every the said manor, hereditaments and premises hereby

hereby granted and released, or mentioned or intended so to be, to enter, and the same from thenceforth peaceably and quietly to have, hold, occupy, possess and enjoy, and receive and take the rents, issues and profits thereof to their own use, without any lett, suit, trouble, interruption or disturbance whatsoever, of from or by the said *Lock*, his heirs or assigns, or any other person or persons whomsoever having, or lawfully, or equitably claiming, or who shall or may have, or lawfully or equitably claim any estate, right, title or interest in to or out of the said manor, hereditaments and premises hereby granted and released, or mentioned or intended so to be, or any of them or any part thereof; *and that* free and clear, and freely and clearly, and absolutely acquitted, exonerated and discharged, or otherwise by the said *Lock*, his heirs, executors or administrators, saved, protected, kept harmless and indemnified of from and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, mortgages, uses, wills, intails, annuities, rent charges, rent, seck and arrears of rent, fines, issues, amerciaments, statutes, recognizances, judgments, executions, extent, seizures, sequestrations, and all other estates, titles, troubles, charges and incumbrances whatever.

And moreover, that if default shall be made of or in payment of the said sum of £——, or the interest thereof, or any part thereof respectively, contrary to the aforesaid proviso or covenant for payment of the same, and the true intent and meaning of these presents: then and in such case, he the said *Lock* and his heirs, and all and every other person and persons whomsoever having, or lawfully or equitably claiming, or who shall or may have, or lawfully or equitably claim any estate, right, title or interest of in or to the said manor, hereditaments and premises hereby granted and released, or mentioned or intended so to be, or any of them, or any part or parts thereof, shall and will from time to time, and all times thenceafter, upon the request of the said *Newton* and *Maria Grant*, or either of them, their

Free from incumbrances.

And in default of payment to make further assurances.

their or either of their heirs or assigns, make do and execute, or cause or procure to be made done and executed, all and every such further, better, more perfect and absolute granting, conveying and assuring all the said manor, hereditaments and premises hereby granted and released, or mentioned or intended so to be, with their appurtenances, unto the said *Newton* and *Maria Grant*, their heirs and assigns, as by the said *Newton* and *Maria Grant*, or either of them, their or either of their heirs or assigns, or their or any of their counsel in the law, shall be reasonably devised or advised and required.

In the mean
time mortgagor
to enjoy.

Provided also, and it is hereby agreed and declared, between and by the said *Lock*, *Newton* and *Maria Grant*, and the true intent and meaning of them and of these presents, nevertheless further is, that it shall and may be lawful to and for the said *Lock*, his heirs and assigns, peaceably and quietly to have, hold, occupy, possess and enjoy all the said manor, hereditaments and premises hereby granted and released, or mentioned or intended so to be, with their appurtenances, and receive and take the rents, issues, and profits thereof, to and for his and their own use, until default shall be made in payment of the said sum of £3000, or the interest thereof, or some part thereof respectively, contrary to the aforesaid proviso or covenant for payment of the same, and the true intent and meaning of these presents, without any lett, suit, trouble, interruption or disturbance whatsoever, of from or by the said *Newton* and *Maria Grant*, or either of them, their or either of their heirs or assigns, or any other person or persons whomsoever, lawfully claiming or to claim, by from or under him them or any of them.

Agreement that
until half a
year's interest
shall be in ar-
rears 3 months
after due, mort-
gagees will ac-
cept 4 per cent.

Provided lastly, and it is hereby lastly agreed and declared, between and by the parties to these presents, that in the mean time, and until some one half-yearly payment of the interest of the said sum of £—— shall be in arrears by the space of three calendar months next after the same shall become due, they the said *Newton* and *Maria*

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Grant, their executors, administrators and assigns, shall and will accept interest for the same after the rate of £4 for £100 by the year, any thing hereinbefore, or in the condition of a bond or obligation bearing even date with these presents, and executed and given by the said *Lock* to the said *Newton* and *Maria Grant*, for further securing the payment of the same sum of £3000, and the interest thereof, to the contrary in any wise notwithstanding. In witness, &c.

Release and Confirmation by way of Mortgage from an Owner and his Trustee.

THIS INDENTURE, made the 2d day of June 1792, between *Aras Box*, of *Stow*, in the county of *Lincoln*, Esq. in whom the capital messuage and other hereditaments hereinafter mentioned to be hereby released, are now vested in trust for *Charles Doe* of the same place, Gent. of the first part, the said *Charles Doe* of the second part, and *George Sod* of *Stow*, aforesaid, Gent. of the third part, witnesseth, that in consideration of the sum of £— of lawful money of Great Britain, by the said *George Sod* to the said *Charles Doe* in hand well and truly paid, at or before the sealing and delivery of these presents; the receipt of which the said *Charles Doe* doth hereby acknowledge, and from the same and every part thereof doth acquit, release, exonerate and for ever discharge the said *George Sod*, his heirs, executors, administrators and assigns for ever by these presents, and in consideration of 10 s. of like lawful money by the said *George Sod* to the said *Aras Box* paid at or before the sealing and delivery of these presents; the receipt of which is hereby acknowledged. He the said *Aras Box*, at the request and by the direction of

The parties.

Consideration.

Bargain & sale
and release by
the trustee.
Grant and re-
lease by mort-
gagor.

Parcels and ge-
neral words.

Habendum to
mortgagee in
fee redeemable.

Covenant from
the trustee that
he has done no
act to incum-
ber.

of the said *Charles Doe*, testified by his being a party to and sealing and delivering these presents, *both* bargained, sold and released, and by these presents *doth* bargain, sell and release, and the said *Charles Doe both* granted, bargained, sold, aliened, released and confirmed; and by these presents, *doth* grant, bargain, sell, alien, release and confirm unto the said *George Sod*, (in his actual possession now being by virtue of a bargain and sale to him thereof, made in consideration of 5 s. by the said *Charles Doe*, by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for the transferring of uses into possession,) and to his heirs, *all*, &c. and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of all and singular the said premises hereby released or intended so to be; and all the estate, right, title, interest, possibility, claim and demand whatsoever, of the said *Aras Box* and *Charles Doe*, and each of them, of, in, to, from, out of and upon the premises hereby released, or expressed or intended so to be; *To have and to hold* the said capital messuage, and all and singular other the premises hereby released, or expressed or intended so to be, and every of them, and every part and parcel thereof, with their appurtenances, unto the said *George Sod*, his heirs and assigns, to and for the only proper use and behoof of the said *George Sod*, his heirs and assigns for ever. But subject to the proviso, consideration, covenant, and agreement hereinafter contained, for the redemption of the same premises. *And the said Aras Box* doth for himself, his heirs, executors and administrators, covenant and declare with and to the said *George Sod*, his heirs and assigns by these presents, that he the said *Aras Box* hath not at any time heretofore made, done, committed or executed, or knowingly or willingly suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby

or

or by reason or means whereof, the premises hereby released, or expressed and intended so to be, or any of them, or any part thereof are, is, can, shall or may be in any wise impeached, charged, affected or incumbered in title, estate, or otherwise howsoever. [Here insert a proviso and covenant between the mortgagor and mortgagee, to the purport of those in the foregoing precedent.] In witness, &c.

Mortgage by Demise of Freehold and Copyhold Lands and Hereditaments, for securing Monies to be paid by Installments.

THIS INDENTURE, made the 6th day of July, George 3, 1793, Between *John Doe* of King's Lynn, in the county of Norfolk, Esq. of the one part, and *Richard Roe* of the same place, Esq. of the other part; witnesseth, that for and in consideration of the sum of £——, of lawful money of Great Britain to the said *John Doe* in hand well and truly paid by the said *Richard Roe*, at or before the sealing and delivery of these presents, the receipt whereof he the said *John Doe* doth hereby acknowledge, and thereof, and of and from every part thereof, doth acquit, release and discharge the said *Richard Roe*, his executors and administrators, and every of them for ever by these presents. He the said *John Doe* hath granted, bargained, sold and demised, and by these presents doth grant, &c. unto the said *Richard Roe*, his executors, administrators and assigns, all that the manor or lordship of ———, with the demesne lands, services, rights, royalties, liberties, privileges, members, and appurtenances thereof, situate, lying and being in the county of Norfolk. And also, all that, &c. (which premises were conveyed

veyed and assured unto and to the use of the said *John Doe* and his heirs, by certain indentures of lease and release, bearing date respectively, the — and — days of — 17—, the release of — parts, and made or expressed to be made between, &c.) *And also*, all other the messuages, lands, tenements and hereditaments whatsoever, of him the said *John Doe*, in — afore said, or any of them, or in any other parish or place thereto adjoining, or near late the estate of the said —. *And also*, all that, &c. (which premises, &c). *And also*, all other the messuages, &c. together with all houses, out-houses, yards, gardens, ways, waters, water-courses, paths, passages, commons, common of pasture, rights, royalties, privileges, members and appurtenances whatsoever to the said manor, messuages, lands and hereditaments, or to any of them belonging or appertaining; or to or with the same or any of them used, occupied or enjoyed, or reputed to be part, parcel or member thereof, or any part thereof, (*save and except* out of the afore said premises, so many, and such part or parts as are, is or be of copyhold, or customary tenure, and are holden of the manor of —.) *and* the reversion and reversions, remainder and remainders thereof. *And also*, all the estate, right, title, interest, inheritance, claim and demand whatsoever of him the said *John Doe*, both at law and in equity of in or to the said manor, messuages, lands and hereditaments, and every part thereof. *To have and to hold* the said manor, messuages, farms, lands, limekiln, tenements and hereditaments, and all and every other the premises hereinbefore described and mentioned, with their and every of their rights, members and appurtenances, (except so many, and such part and parts thereof as are, is or be holden of the said manor of —), unto the said *Richard Roe*, his executors, administrators and assigns, from henceforth, for and during, and to the full end and term of 1000 years from thence next ensuing, and fully to be complete and ended; *yielding and paying* therefore yearly

yearly during the said term, the rent of one pepper corn only if demanded, unto the said *John Doe*, his heirs and assigns. *Provided always*, and these presents are upon this exprefs condition, that if the said *John Doe*, his heirs, executors or administrators, or any of them, do and shall well and truly pay or cause to be paid unto the said *Richard Roe*, his executors, administrators or assigns, at or in the market cross of King's Lynn aforesaid, the full and just sum of £——, with interest for the same at and after the rate of £5 per cent. per ann. of good and lawful money of Great Britain, at the times and in manner hereinafter expressed; (that is to say,) the sum of £——, being one half-year's interest for the said sum of £——, after the rate aforesaid, on the 6th day of January next ensuing the date of these presents, the like sum of £——, being another half year's interest for the same, on the 6th day of July then next following, which will be in the year of our Lord 1794; and the like sum of £—— on every succeeding 6th day of January and 6th day of July, until the 6th day of July in the year of our Lord 1796, and do and shall on the said 6th day of July, in the year of our Lord 1796, well and truly pay or cause to be paid unto the said *Richard Roe*, his executors, administrators or assigns, the full sum of £——, being the said principal sum of £——, with the half-year's interest which shall be then due thereon, without any deduction, defalcation or abatement whatsoever, for or in respect of any rate, tax, charge, assessment or imposition whatsoever, already subsisting and payable, or which may hereafter be created, imposed or become payable under authority of parliament, or otherwise howsoever: then and from thenceforth, these presents, and the term of years hereby created, shall cease, determine, and be absolutely void to all intents and purposes, any thing herein contained to the contrary notwithstanding. *And* the said *John Doe* for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said *Richard Roe*, his ex-

cutors, administrators and assigns, by these presents in manner following: (that is to say,) that the said *John Doe*, his heirs, executors or administrators, shall and will well and truly pay or cause to be paid unto the said *Richard Roe*, his executors, administrators or assigns, the said full and just sum of £——, together with such interest for the same in the mean time, as hereinbefore mentioned, at the respective times, and in manner hereinbefore expressed and agreed on, without any deduction or abatement whatsoever, according to the true intent and meaning of the before mentioned proviso, and of these presents. *And also*, that he the said *John Doe* or his heirs, shall and will at any time hereafter, upon the request of the said *Richard Roe*, his executors, administrators or assigns, but at the costs and charges of him the said *John Doe*, his heirs and assigns, duly surrender or cause to be surrendered out of his or their hands, into the hands of the lord or lords, lady or ladies, and according to the custom of the manor of —— aforesaid, all such, and so much, and all such part and parts of the messuages, farms, lands and premises hereinbefore described or mentioned, as is, are or be copyhold, or of customary tenure, and holden of the same manor, with their and every of their rights, members and appurtenances; and the reversion and reversions, remainder and remainders thereof: *and also*, all the estate, right, title, interest, inheritance, use, trust, property, claim and demand whatsoever, of him the said *John Doe* therein, *To the use* of the said *Richard Roe*, his heirs and assigns for ever: subject however to a like proviso or condition in such surrender or surrenders to be contained for making void the same, as is hereinbefore contained, with respect to the said freehold premises expressed to be hereby demised. *And that*, until such surrender or surrenders shall be so had and passed, he the said *John Doe* and his heirs, and all person and persons, in trust for him or them, shall stand seized and possessed of such copyhold premises, to and for the only use and benefit of the said *John Doe*, his executors,

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executors, administrators or assigns, subject to the proviso aforesaid. *And also*, that he the said *John Doe*, at the time of the execution of these presents, is, and standeth lawfully, rightfully and absolutely seized of the said manor or lordship of ———, and of all and singular the freehold messuages, farms, lands and premises hereinbefore described and mentioned, with the appurtenances of a good indefeazible estate of inheritance in fee simple in possession; and of, and in the copyhold or customary parts thereof, of and for a good customary estate of inheritance, in fee simple, according to the custom of the said manor of ———. *And now* hath in himself good right, full power and lawful authority to grant and demise all and singular the said freehold premises, and to surrender and assure all the copyhold premises, with the respective appurtenances, unto the said *Richard Roe*, his heirs, executors, administrators and assigns, according to the respective natures and tenures thereof, and for such estates and interests as hereinbefore mentioned. *And that it shall and may be lawful* for the said *Richard Roe*, his executors, administrators and assigns, (immediately after default shall be made in payment of the said principal sum of £—— or any part thereof, or any interest for the same, at and upon such respective days and times as hereinbefore mentioned); to enter upon, possess and enjoy the said manor or lordship of ———, and all and singular the said freehold messuages, farms, lands and premises, and every part thereof, with the appurtenances. *And*, for the said *Richard Roe*, his heirs and assigns, in like manner to enter upon, possess and enjoy the said copyhold and customary premises respectively; and from thenceforth to receive and take the rents, issues and profits of the same freehold and copyhold, or customary premises respectively, and every part thereof, to his and their own use and benefit, for and during such respective estates, terms and interests as aforesaid, without the lawful lett, suit, trouble, denial or interruption, of, or by him the said *John Doe*, his heirs

or assigns, or of or by any person or persons, whomsoever; And also, that (in case default shall be made of or in payment of the said sum of £——, or any part thereof, or of any interest for the same at the respective days and times hereinbefore appointed for payment thereof,) he the said *John Doe*, his heirs and assigns, and all and every other person and persons whomsoever claiming, or to claim, any estate, right, title, trust or interest, of, in or to the said manor or lordship of——, messuages, farms, lands and premises hereby granted and demised, and covenanted to be surrendered, with the appurtenances, shall and will at any time after such default shall be made as aforesaid, upon the request of the said *Richard Roe*, his heirs, executors, administrators or assigns, make, do, acknowledge, levy, execute, pass and suffer, or cause, &c. all and every such further and other lawful act and acts, deed and deeds, conveyances, surrenders, and assurances in the law whatsoever, for the further, better and more perfect granting, demising and assuring the said manor or lordship of——, and all and singular the freehold messuages, lands and premises, and every part thereof, with the appurtenances, unto the said *Richard Roe*, his executors, administrators and assigns, for and during the residue and remainder of the said term of 1000 years, which shall be then to come, and unexpired, freed and discharged of and from the aforesaid proviso, or condition for redemption hereinbefore contained, And for the better and more effectual surrendering and assuring, all and singular the said copyhold premises unto the said *Richard Roe*, his heirs and assigns, freed and discharged from such right and equity of redemption as aforesaid; as by the said *Richard Roe*, his heirs, executors, administrators and assigns, or his or their counsel in the law, shall be advised or required. And further, the said *John Doe* doth hereby declare, that all and every person and persons, to whom any term or terms of years, of and in the said manor, messuages, farms, lands and hereditaments,

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ments, hath or have been granted, or who now are, or is possessed thereof, and his and their executors and administrators, shall from henceforth respectively, stand possessed of such term or terms of years; *In trust* only for the said *Richard Roe*, his executors, administrators and assigns, for the better securing to him and them the repayment of the said sum of £ —, with such interest as aforesaid, according to the true intent and meaning of these presents. *And moreover*, it is hereby agreed and declared between and by the said *John Doe* and *Richard Roe*, that in the mean time, and until the said *John Doe*, his heirs, executors, administrators or assigns, shall make default in payment of the said principal sum of £ —, or some part thereof, or in payment of some interest for the same, at any of the days or times hereinbefore appointed for payment of the same, it shall and may be lawful for the said *John Doe*, his heirs and assigns, to hold and enjoy the said manor, and all and singular the freehold and copyhold, or customary messuages, lands, tenements, hereditaments, and premises respectively, and every of them, and every part of them, and to receive and take the rents, issues and profits thereof, and of every part thereof, to and for his and their own use and benefit, without the lawful lett, suit, molestation, interruption or disturbance of or by the said *Richard Roe*, his heirs, executors, administrators or assigns; any thing hereinbefore contained to the contrary notwithstanding. *In witness, &c.*

Assignments of Leases of several Messuages, &c. and also of Covenants for building others; with an Assignment of Policy of Insurance for securing Monies already advanced, and all future Sums to be advanced by Mortgagee; with many special Covenants.

THIS INDENTURE, made the day of
in the 29th year of the reign of our Sovereign Lord
George III. by the grace of God, King of Great Britain,
France

Indenture between Lock—
first part, and

Milton the other part; recites, that by indenture 27th December 1787, *Miss Milton* demises to *Newton* a parcel of land in meadow.

To hold for 99 years, at the yearly rent of £—

And reciting, that by indenture 27th December 1787, the said *Newton* demised unto the said *Lock*, part of the premises comprised in the indenture 27th December 1787.

To hold to the said *Lock* for 99 years, paying a pepper corn rent for the first year and a half and £5, 5s. for the residue of the term.

France and Ireland, defender of the Faith, &c. and in the year of our Lord Christ, 1780, between *Lock* of &c. of the one part, and *Milton* of &c. of the other part. *Whereas*, by indenture bearing date the 27th day of December 1787, and made, or expressed to be made between *Eliza Milton*, (the daughter of the said *Milton*), of the one part, and *Newton* of the other part. The said *Eliza Milton* did demise unto the said *Newton*, a plot, piece or parcel of ground, part of a field or close of ground called meadow, lying within, and parcel of the manor of ——— in the said county of ——— with the appurtenances; *to hold* the same unto the said *Newton*, his executors, administrators and assigns, from the day next before the day of the date of the said indenture now in recital, for the term of 99 years, at the yearly rent of £——, and with and under such covenants and agreements as are in the same indenture contained, on the part and behalf of the said *Newton*, his heirs, administrators and assigns, to be observed and performed. *And whereas*, by indenture bearing date the 27th day of December, now last past, and made or expressed to be made between the said *Newton* of the one part, and the said *Lock* of the other part, The said *Newton* did demise unto the said *Lock*, the plot, piece or parcel of ground, in the indenture now in recital, particularly mentioned part of the premises by the indenture of the 27th day of December 1787, demised as hereinbefore is mentioned: and which said plot, piece or parcel of ground in the indenture now in recital, mentioned and intended to be thereby demised, is particularly described in the said indenture now in recital, and is delineated on the back of the same indenture, and marked or numbered ——. *To hold* the same unto the said *Lock*, his executors, administrators and assigns, from the day next before the day of the date of the said indenture, now in recital for the term of 98 years, yielding and paying for the first year and one half of the said term of 98 years, the rent of a pepper corn, And for the remainder of the said term of

98 years, the yearly rent of £5. 5s. and during the whole of the said term, with, under, and subject to such covenants and agreements as are in the said indenture now in recital contained on the part of the said *Lock*, his executors, administrators and assigns to be observed and performed. And whereas the said *Lock* having undertaken to erect and build upon the plot of ground so demised to him by the said *Newton* as aforesaid, a messuage or tenement, with proper offices and other conveniencies; and for that purpose being desirous of borrowing the sum of £500, he the said *Milton* did, upon the application and request of the said *Lock*, agree to lend him the sum of £500 in manner hereinafter mentioned; (that is to say,) to lend him the sum of £100, part of the said sum of £500, when and so soon as so much of the said intended erections or buildings should be completed, as upon a valuation should appear to have cost the sum of £200; and to lend him the sum of £150, (further part of the said sum of £500,) when and so soon as the said intended erections and buildings should be covered in, and to advance and lend him the sum of £150, (residue of the said sum of £500,) when and so soon as the said intended erections and buildings should be completely finished. And whereas, the said *Lock* hath to the satisfaction of the said *Milton*, completed so much of the said intended erections and buildings, as upon a valuation appear to have cost the sum of £200. And by an instrument or policy of insurance taken out of the Phoenix Fire Insurance Office, bearing date on or about the day of March instant, and numbered —, The said *Lock* hath insured the sum of £500 upon the messuage or tenement, erections and buildings so by him raised and completed, and intended to be raised and completed, as hereinbefore is mentioned, by the admeasurement and valuation. And whereas the said *Milton* hath, in pursuance of his said agreement, advanced to the said *Lock* the sum of £100: and for securing to the said *Milton*, his executors, administrators

And reciting the contract for the loan of £500, by the three instalments therein mentioned.

And reciting that £200 hath already been laid out upon the buildings. And that they have been insured by the said *Lock* for £500

And reciting, that *Milton* hath advanced the said *Lock* £100. And

that the said *Lock* hath executed to the said *Milton*, a bond for £— for securing the same, and all other sums of money to be advanced by him.

The indenture therefore witnesseth, that the said *Lock* assigns to the said *Milton* the premises comprised in the indenture of the 27th December 1788,

administrators and assigns, the repayment of the said sum of £100, and also the repayment of such further sums of money as may be advanced by the said *Milton* to the said *Lock*, in pursuance of his aforesaid agreement, with interest for the same respectively; He the said *Lock* hath executed and given to the said *Milton* a bond or obligation in writing, bearing even date with these presents, and is thereby become bound to him in the sum of £1000 of lawful money of Great Britain, with a condition written under the said bond or obligation, for making void the same on payment by the said *Lock*, his heirs, executors, administrators or assigns, to the said *Milton*, his executors, administrators or assigns of the said sum of £100, and such further sum or sums of money as aforesaid, with interest for the same respectively, after the rate, on or at the days or times, and in the manner in the condition written under the said bond or obligation hereinafter mentioned, and appointed for the payment of the same respectively. *Now this indenture witnesseth*, that in consideration of the sum of £100 so by the said *Milton* to the said *Lock*, advanced and lent as hereinbefore is mentioned, the receipt of which sum £100, the said *Lock* doth hereby acknowledge; and from the same and every part thereof, *doth* acquit, release and discharge the said *Milton*, his heirs, executors, administrators and assigns for ever by these presents. *And* in consideration that the said *Milton* hath agreed to advance to the said *Lock* the further sums of £150 and £100 and £150 as hereinbefore is mentioned and recited, And for securing to the said *Milton*, his executors, administrators and assigns, the repayment of the said sum of £100 so as aforesaid advanced and lent, and such other sums of money as shall hereafter be advanced and lent by the said *Milton*, to or on the account of the said *Lock* as herein is mentioned, with interest for the same respectively, He the said *Lock* hath bargained, sold and assigned, and by these presents *doth* bargain, sell and assign unto the said *Milton*, All the plot, piece or parcel of ground by the said indenture

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indenture of the 27th day of December 1788, demised by the said *Newton* to the said *Lock*, his executors, administrators and assigns, for the term of 98 years, as hereinbefore is mentioned, with their appurtenances. *And also*, all that the messuage, tenement or dwelling house, and all and singular other the erections and buildings, which is or are now erecting and building, or which shall hereafter be erected or built on the premises, or any part thereof, with their appurtenances: and all cellars, solars, lofts, lights, easements, ways, waters, watercourses, outlets, profits, privileges and advantages whatsoever to the said plot, piece or parcel of ground, messuage or tenement and premises belonging. *And also*, all that the instrument or policy of insurance, bearing date the day of _____, and numbered _____ as aforesaid, whereby the premises hereby assigned are insured in the Phoenix Fire Office, as hereinbefore is mentioned: and all the estate, right, title, interest, term and terms of years yet to come, and unexpired, property, claim and demand whatsoever, both at law and in equity of him the said *Lock*, of in and to the same premises, and every part and parcel thereof. *To have and to hold* the said plot, piece or parcel of ground, messuage or tenement, and all and singular other the premises hereinbefore mentioned and intended to be hereby assigned, (except the said instrument or policy of insurance,) with the appurtenances, unto the said *Milton*, his executors and assigns, from the day of the date of these presents, for and during all the rest, residue and remainder, which is now to come and unexpired therein, of the said term of, under and subject to the rents, covenants and agreements by and in the said indentures of the 27th day of December 1787, and the 27th day of December 1788 respectively, reserved and contained, which ought henceforth on the part of the tenant, lessee or assignee of the same premises, to be paid, kept, observed and performed. *And to have and to hold*, receive and take the said instrument or policy of insurance, and all

And the policy

to hold the premises except the policy, the said *Milton* for the residue of the term of _____ years.

And to hold the policy to the said *Milton* absolutely.

Proviso for redemption on payment of the £100 and interest, and the further sums of money to be advanced by Milton.

all and every the sums and sum of money, benefit and advantage whatsoever, to be received, gotten or taken by virtue thereof, unto the said *Milton*, his heirs, administrators or assigns, for his own use and benefit. *Provided always*, and it is hereby declared and agreed, by and between the parties to these presents, that if the said *Lock*, his executors, administrators or assigns, shall and do well and truly pay or cause to be paid unto the said *Milton*, his executors, administrators or assigns, the sum of £100 of lawful money of Great Britain, with interest for the same after the rate of £5 for £100 for a year, on the 25th day of September now next ensuing, *And*, in case the said *Milton*, his executors, administrators or assigns, do and shall in pursuance of his aforesaid agreement in this behalf or otherwise, advance any further sum or sums to or on the account of the said *Lock*, his executors, administrators or assigns, Then and in such case, if the said *Lock*, his heirs, executors, administrators or assigns, do and shall on or before the expiration of six calendar months, to be computed from the time or times of such advancement or advancements respectively, well and truly pay or cause to be paid unto the said *Milton*, his executors, administrators or assigns, *All* and every the sums and sum so to be advanced by him or them, as last hereinbefore is mentioned, with interest for the same respectively, after the like rate of £5 for every £100 for a year, to be computed from the time or times of such last mentioned advancement or advancements respectively, clear of all deductions and reprises for taxes, or upon any other account whatsoever: then and in such case, immediately upon such payment being made as aforesaid, he the said *Milton*, his executors, administrators and assigns, shall and will upon the request, and at the costs and charges of the said *Lock*, his executors, administrators or assigns, assign the plot or parcel of ground, messuage or tenement, and other the premises comprized in the said term of 98 years, with their appurtenances unto the said *Lock*, his executors, administrators,

or

or assigns, for and during all the rest, residue and remainder which shall be then to come and unexpired of the same term, and also the said policy of insurance; or otherwise dispose of the same premises respectively, as he or they shall direct or appoint, free from all incumbrances whatsoever, made, done or committed by the said *Milton*, his executors, administrators or assigns. And the said *Lock* doth for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said *Milton*, his executors, administrators and assigns, by these presents in manner following: (that is to say,) that he the said *Lock*, his heirs, executors, administrators or assigns, shall and will well and truly pay or cause to be paid unto the said *Milton*, his executors, administrators or assigns, the said sum of £100, and such other sum or sums of money as shall be advanced by the said *Milton*, his executors, administrators or assigns, to or on account of the said *Lock*, his executors, administrators and assigns as aforesaid, and the interest thereof respectively, after and on, or at the days or times hereinbefore appointed for the payment thereof respectively. And the said *Lock* doth for himself, his heirs, executors, administrators and assigns, covenant, promise and agree with and to the said *Milton*, his executors, administrators and assigns by these presents, in manner following, (that is to say,) that the said indenture of the 27th day of December 1788, is at the time of sealing and delivering of these presents, a good and available demise or lease of the plot or parcel of ground, messuage or tenement and other the premises therein comprised, and hereinbefore mentioned to be hereby assigned, and now is in full force, unforfeited and unsurrendered, and not any ways made void or voidable. And that he the said *Lock* now hath in himself good right, full power, and lawful and absolute authority to assign the said plot or parcel of ground, messuage or tenement, and other the premises comprized in the said term of— years, and hereinbefore mentioned to be hereby assigned, with their appurtenances,

Covenant by the said *Lock* for payment of the money.

Covenant by the said *Lock* that lease of the 27th December 1788 is subsisting.

That he hath good right to assign the same.

For quiet enjoyment.

Free from incumbrances.

And for further assurance

appurtenances, unto the said *Milton*, his executors, administrators and assigns, for all the residue which is therein now to come and unexpired of the said term of 98 years, in manner aforesaid, and according to the true intent and meaning of these presents. *And also*, that if default shall be made of, or in payment of the said sum of £100, or any sum or sums of money hereinafter to be advanced by the said *Milton*, his executors, administrators, or assigns as aforesaid, or any of them, or the interest thereof respectively, or any part thereof respectively, contrary to the true intent and meaning of these presents; then and in such case, it shall and may be lawful to and for the said *Milton*, his executors, administrators and assigns, from time to time, and at all times thereafter, peaceably and quietly to enter into, and have, hold, occupy, possess and enjoy all the premises comprised in the said term of 98 years, with their appurtenances, and to receive and take the rents, issues and profits thereof, to his and their own use, for and during all the then residue and remainder of the said term of 98 years, without any lett, suit, trouble, denial, eviction or interruption of or from, or by the said *Lock*, his executors, administrators or assigns, or any other person or persons whomsoever, and that free and clear of and from all and all manner of titles, troubles, charges and incumbrances whatsoever, had, made, done, committed, executed or suffered by the said *Lock*, or any other person or persons whomsoever, (save and except the rents and covenants reserved and contained by and in the said hereinbefore in part recited indentures, which on the tenant or lessee's part, shall and ought from thenceforth to be paid, kept, observed and performed.) *And further*, that in case default shall be made in payment of the said sum of £100, or any sum or sums of money hereafter to be advanced by the said *Milton* as aforesaid, or any of them, or the interest thereof respectively, or any part thereof respectively, contrary to the true intent and meaning of these presents, he the said *Lock*, and all and every other person

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person and persons whomsoever, lawfully or equitably claiming or to claim any estate, term or interest, in to or out of the said premises comprised in the said term of 98 years, or any part or parts thereof, by, from, through, under or in trust for him, shall and will from time to time, and at all times after such default as aforesaid, upon the request of the said *Milton*, his executors, administrators or assigns, but at the costs and charges of the said *Lock*, his heirs, executors, administrators or assigns, make, do and execute, or cause or procure to be made, done, and executed, all and every such further, and other lawful and reasonable acts, deeds, matters, things, conveyances, assignments and assurances in the law whatsoever, for the further and better, more perfectly and absolutely assigning, assuring and confirming the premises comprised in the said term of 98 years, with their appurtenances, unto the said *Milton*, his executors, administrators and assigns, absolutely and unconditionally, and discharged from all equity of redemption, as by the said *Milton*, his executors, administrators or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required. And the said *Lock* doth also for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said *Milton*, his executors, administrators and assigns, by these presents: that he the said *Lock*, his executors, administrators or assigns, shall and will, thirty days at least before the expiration of the policy of insurance hereinbefore assigned, and the said term of one year therein mentioned to commence as aforesaid, (in case the principal sums of money intended to be hereby secured, or any of them, or any part thereof respectively, shall be then due and owing by virtue of these presents,) to the good liking of the said *Milton*, his executors, administrators or assigns, but at the proper costs and charges of the said *Lock*, his executors, administrators or assigns, insure, or cause to be insured from fire in the said Phoenix Fire Office, or in some other good office of insurance, in the

Covenants from
the said *Lock* to
renew the in-
surance.

name of the said *Milton*, his executors, administrators or assigns, the said messuage or tenement, and all other erections and buildings to be erected and built on the said premises, hereby assigned, or intended so to be, with their appurtenances, in the full sum of £1000, for the further term of seven years. *And so* from time to time, during so long time as any part of the said principal sums shall be due and owing, shall and will in like manner, insure and keep insured the said messuage or tenement, erections and buildings from fire and all losses to be occasioned thereby. *And further*, that in case the said *Lock*, his executors, administrators or assigns, do or shall at any time hereafter, fail or neglect to insure the said messuage or tenement, erections and buildings, (now erected or hereafter to be built on the said premises hereby assigned, within such time as is hereinbefore agreed and appointed for insuring the same, according to the true intent and meaning of these presents, it shall and may be lawful to and for the said *Milton*, his executors, administrators or assigns, from time to time, during so long time as the said principal sums of money, or any part thereof shall be due, to insure the mortgaged premises in his or their own name or names, from fire, in any office or offices of insurance from fire, in any sum not exceeding in the whole the sum of £1000, and for any number of years, as he or they shall think proper. *And that*, immediately after payment of any sum for insuring the said mortgaged premises, the same premises shall stand charged therewith, and be a security for the repayment thereof unto the said *Milton*, his executors, administrators and assigns, and shall not be redeemed or redeemable, until as well the said monies so to be paid, for and on account of such insurance as aforesaid, and interest for the same after the rate of £5 per cent. per annum, as the said principal sums of money hereby secured, and every of them, and the interest thereof respectively, shall be fully paid and satisfied unto the said *Milton*, his executors, administrators and assigns. *And*

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the said *Lock* doth for himself, his heirs, executors, administrators and assigns, covenant, promise and agree with and to the said *Milton*, his executors, administrators and assigns, by these presents, in manner following: (that is to say,) that the land-tax and all other rates, assessments and charges due and payable for the premises, or any part thereof, previously and up to the 25th day of December now last past, have been paid and discharged by the said *Lock*. And that the said *Lock*, his executors, administrators or assigns, shall and will henceforth, for and during all the residue of the said term of 98 years, pay or cause to be paid, the yearly rent by the said indenture of the 27th day of December 1788, reserved, and perform and keep all the covenants and agreements in the said indenture contained, which ought henceforth on the tenant's lessee's or assignee's part, to be paid, kept, observed, and performed. And further, that if the said *Lock*, his executors, administrators or assigns, shall not before the day of _____, complete and perfectly finish every part of the buildings by the said indenture of the day of _____ 17____, covenanted and agreed by him the said *Lock*, to be erected and built as aforesaid, according to the true intent and meaning of the said indenture of the 27th day of December 1788; then and in such case, it shall and may be lawful to and for the said *Milton*, his executors, administrators and assigns, to enter into and upon the said plot of ground hereby assigned, and to finish and complete the whole according to the true intent and meaning of the covenants of the said *Lock* for that purpose contained in the said indenture of the 27th day of December 1788. And it is hereby agreed and declared between and by the parties to these presents, that the plot of ground, messuage and premises hereby assigned, and every part thereof shall be a security for, and stand, and be charged and chargeable with, and shall not be redeemed or redeemable until the payment to the said *Milton*, his executors, administrators and assigns, of all and every the

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Covenants from the said *Lock*, that the rents and covenants are due, paid and performed, up to the time of the sealing and delivery of these presents. No rent due,

And for the future payment and performance of the same.

That if he neglects to complete the buildings, it shall be lawful for *Milton* to do it.

And that the money to be expended by *Milton* thereupon, shall be a charge on the premises.

sum and sums of money which the said *Milton*, his executors, administrators or assigns, shall or may pay, lay out, expend or advance for the purposes last hereinbefore mentioned; (the amount thereof to be proved by the receipts of the persons employed therein by the said *Milton*, his executors, administrators or assigns,) with interest for the same after the rate of £5 per cent. per annum, from the time of advancing the same respectively. In witness, &c.

The following Endorsement was made on the back of the Deed.

I acknowledge, that the within named *Milton* has this day lent and advanced to me the within named *Lock*, the sum of £150, in pursuance of his agreement within mentioned, and that the same is from henceforth to be a charge upon the premises within mentioned, and to be paid to the said *Milton*, his executors, administrators and assigns, at the expiration of six months from the date hereof, together with interest for the same at the rate of £5 per cent. per annum. Dated this day of 1789.

It is not unusual to see a clause in mortgages, empowering the mortgagee, in case of failure in payment, to sell. But it should be remembered, that whatever clauses or covenants there are in a conveyance, though they seem to import an absolute disposition or conditional purchase; yet, if upon the whole, it appears to have been the intention of the parties, that such conveyance should only be a mortgage or pass an estate redeemable, a court of equity will always construe it such. *Vern.* 183. 268. 394. And it has been settled repeatedly, that a conveyance originally designed as a security for money, shall always continue a mortgage; notwithstanding the most express agreement of the parties to the contrary, in the original deed: and certainly no purchaser could be recommended to take a title under

under such an agreement. Upon the whole, therefore, a clause to sell is perfectly inoperative;—it always adds greatly to the length of a draft, and might be construed to wear the appearance of imposing too hard conditions on the borrower.

Mortgage of Freehold, Leasehold, and Copyhold Estates, for securing several Sums and Interests to be paid by Installments, either in Money or Navy Bills; with Covenant to surrender Copyholds.

THIS INDENTURE, of four parts, made the day of _____, in the 26th year of the reign of King George 3. and in the year of our Lord 1786, between Pope of _____, Esq. of the first part, Thompson of _____ (a trustee for the said Pope of the messuage, lands, tenements, and hereditaments hereinafter demised by the said Pope and Thompson) of the second part, Young of _____, Esq. (a trustee for the said Pope of the messuages, lands, tenements, and hereditaments hereinafter demised by the said Young; and of the lands, tenements, and hereditaments hereinafter demised by the said Pope and Young) of the third part, and Mason of _____, Esq. of the fourth part. Whereas, by certain articles of agreement, bearing date the 13th day of April 1785, made between the said Mason of the one part, and the said Pope of the other, in consideration of the sum of £4200, thereby agreed to be paid by the said Pope to the said Mason, in manner hereinafter mentioned; that is to say, £1400, part thereof, on the 29th day of September 1786, £1400, other part thereof, on the 29th day of September 1787, and £1400, residue thereof, on the 29th day of September 1788; he the said Mason did bargain and sell unto the said Pope, certain

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certain oak trees, timber, and wood, in the said agreement now in recital mentioned. *And whereas*, by a certain other agreement, dated the 30th day of April 1785, and made between *Gray* for the said *Mason* of the one part, and the said *Pope* of the other part, the said *Gray* for the said *Mason*, in consideration of the sum of £6000 thereby agreed to be paid by the said *Pope* to the said *Mason*, in manner hereinafter mentioned; that is to say, £2000, part thereof, on the 2d day of February 1786, £2000, other part thereof, on the 2d day of February 1787, and the remaining £2000 on the 2d day of February 1788, did bargain and sell unto the said *Pope*, certain oak trees, timber, and wood, in the said agreement mentioned, *And whereas* the timber, mentioned in the said two agreements, hath been since felled; but the first payment of the said sum of £2000, which by the said agreement was to have been made on the 2d day of February last, hath not yet been made, and it hath been agreed to allow further time for the payment thereof until the day of next, when the same is to be paid, together with full lawful interest for the same, from the said 2d day of February last, *And whereas*, by a certain other agreement, bearing date the 25th day of March 1786, made between the said *Gray*, for and on behalf of the said *Mason* of the one part, and the said *Pope* of the other part, in consideration of the sum of £——— to be paid by the said *Pope* to the said *Mason*, in manner hereinafter mentioned; that is to say, £———, part thereof, on the 29th September 1787, £———, other part thereof, on the 29th September 1788, and £———, residue thereof, on the 29th September 1789; he the said *Gray*, on behalf of the said *Mason*, did bargain and sell to the said *Pope*, certain oak, elm, ash, cherry, and other trees, timber, and wood, in the said agreement now in recital mentioned. *And it is* in and by the said last-mentioned articles of agreement stipulated and agreed, that the said timber therein mentioned should be stocked up or cut down by the said *Pope*,
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his executors, administrators, or assigns, before the 1st day of August 1787, if the said *Mason* should so long live. And it is also thereby provided and agreed, that if the said *Mason* should depart this life before the 1st day of August 1787, and all the said timber should not at his decease be cut down, then that the executors and administrators of the said *Mason* should abate and allow out of the said purchase-money, so much as such timber trees, which might happen to be not fallen or cut down, might be computed to be worth, the same to be computed and valued by two indifferent persons, one to be chosen by the executors or administrators of the said *Mason*, and the other by the said *Pope*, his executors, administrators, or assigns. And the said *Pope* did, at the time of the execution of the said several articles, also agree to give such security as should be satisfactory to the said *Mason*, for the due payment of the said several sums of money therein mentioned, at the time the same were by the said agreements made payable, and for the performance of the covenants of the said *Pope* in the said articles contained. And whereas it hath been agreed between the said *Mason* and the said *Pope*, that the said *Pope* should cause and procure to be made unto the said *Mason*, his executors, administrators, and assigns, a mortgage of the several freehold, leasehold, and copyhold estates hereinafter mentioned, and hereafter demised, granted, and assigned, and covenanted to be surrendered respectively, as and for a security for the due payment of the said several sums of £6000, £4200, and £10,589, making together the sum of £20,789, in manner and at the times and subject to the proviso hereinafter expressed and contained. Now, therefore, this indenture witnesseth, that in pursuance and execution of such agreement for making such security to the said *Mason*, and for and in consideration of the premises, and of the sum of 5s. of lawful money of Great Britain, by the said *Mason* to the said *Pope* in hand paid at or before the sealing and delivery of these presents, the
receipt

receipt whereof is hereby acknowledged ; he the said *Pope* hath granted, bargained, sold, and demised ; and by these presents doth grant, bargain, sell, and demise unto the said *Mason*, his executors, administrators, and assigns, (*All that, &c.*) All which said messuages or tenements, closes of ground and premises, were by indentures of lease and release, bearing date respectively the 13th and 14th days of July, in the year of our Lord 1777, and made between ——— and *Elizabeth* his wife of the first part, ——— of the second part, and the said *Pope* of the third part, granted and released unto the said *Pope*, his heirs and assigns for ever. *And also all that* one full and undivided moiety, or half part (the whole into two equal parts being divided,) of and in *all that, &c.* All which said moiety of the said last-mentioned messuage or tenement, piece and parcel of land, was by indentures of lease and release, bearing date respectively the 11th and 12th days of April, in the year of our Lord 1711, made between ——— and *Elizabeth* his wife, and *Mary* ——— of the one part, and the said *Pope* of the other part, granted and released unto the said *Pope*, his heirs and assigns for ever. *And also, all that, &c.* All which said last-mentioned messuage or tenement, pieces and parcels of land, with the appurtenances, were by indentures of lease and release, bearing date respectively the 22d and 23d days of May, in the year of our Lord 1782, made between the said ——— and *Elizabeth* his wife, and *Mary* ——— of the one part, and the said *Pope* of the other part, granted and released unto the said *Pope*, his heirs and assigns for ever, and all houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, meadow, leasows, pasture, feedings, commons, common of pasture, ways, waters, watercourses, fishings, wood, underwood, and the ground and soil thereof, rents, liberties, privileges, commodities, advantages, emoluments, hereditaments, and appurtenances whatsoever, to the said messuages or tenements, buildings, pieces or parcels of land, and premises hereinbefore mentioned

or

or described, or any of them, or any part or parcel thereof, belonging or in anywise appertaining; and the reversion or reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and all deeds, evidences, and writings, touching or concerning the title to the said messuages or tenements, moiety, lands, hereditaments, and premises hereby granted and demised, or expressed and intended so to be, or any part thereof, now in the custody or power of him the said *Pope*, or which he can or may come by without suit at law or in equity, *To have and to hold* the said messuages or tenements, moiety, lands, hereditaments, and premises, so hereby demised as aforesaid, or expressed and intended so to be, with their, and every of their appurtenances, unto the said *Mason*, his executors, administrators, and assigns, from the day of the date of these presents, for and during the term of 300 years, from thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, yielding and paying therefore the yearly rent of a pepper corn on the feast day of St. John the Baptist, in every year, (if lawfully demanded,) subject nevertheless to the proviso for redemption of the said premises hereinafter contained. *And this indenture further witnesseth*, that for the considerations aforesaid, and of the sum of 10*s.* of lawful money of Great Britain, by the said *Mason*, to them the said ——— and *Thompson*, in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said *Thompson*, at the request and by the direction of the said *Pope*, testified by his being a party to and executing of these presents, hath bargained, sold; and demised, and by these presents doth bargain, sell, and demise; and the said *Pope* hath granted, bargained, sold, demised, ratified, and confirmed; and by these presents doth grant, bargain, sell, demise, ratify, and confirm, unto the said *Mason*, his executors, administrators, and assigns, *All that, &c.* All which said last-mentioned messuage

A trustee may object to joining in a *grant* of a term or chattel interest, as that word implies a warranty in that case, though not in a conveyance of the inheritance as it seems.

suage or tenement, and pieces of land, were by indentures
 of lease and release, bearing date respectively the 14th
 and 15th days of November, in the year of our Lord
 1777, made between ——— and *Elizabeth* his wife of
 the one part, and the said *Pope* and *Thompson* of the other
 part, granted and released unto the said *Pope* and *Thomp-*
son, and their heirs, to the sole and proper use and behoof
 of the said *Pope* and *Thompson*, and the heirs and assigns of
 the said *Pope* and *Thompson* for ever, nevertheless as to the
 said *Thompson* in trust, to the only proper use and benefit
 of the said *Pope*, his heirs and assigns for ever, together
 with all houses, &c. And the reversion, &c. And all
 deeds, evidences, and writings, touching and concerning
 the title to the said messuage or tenements, land and pre-
 mises last hereinbefore mentioned, in the custody or
 power of the said *Pope* and *Thompson*, or either of them,
 or of any other person or persons in trust for them or any
 of them; and true and attested copies of all such other
 deeds, evidences, and writings, touching or concerning
 the said premises, jointly with any other messuages, lands,
 tenements, and hereditaments, which are now in the cus-
 tody or power of the said *Pope* and *Thompson*, or either of
 them, or any other person or persons, in trust for them or
 either of them, *To have and to hold* the said messuage or
 tenement, lands, and premises last hereinbefore demised,
 with the appurtenances, unto the said *Mason*, his execu-
 tors, administrators, or assigns, from the day of the date
 of these presents, for and during, and unto the full end
 and term of 300 years from thence next ensuing, and
 fully to be complete and ended, without impeachment of
 or for any manner of waste, yielding and paying there-
 fore yearly during the said term unto the said *Pope* and
Thompson, and the heirs and assigns of the said *Pope*, the
 yearly rent of one pepper corn on the feast day of Saint
 John the Baptist, in every year during the continuance of
 the said term, if the same shall be lawfully demanded,
 subject nevertheless to the proviso for redemption herein-
 after

after contained. *And this indenture further witnesseth, that* for the considerations aforesaid, and of the sum of 10s. of lawful money of Great Britain by the said *Mason*, to them the said *Pope* and *Thompson* in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said *Thompson*, at the request and by the direction of the said *Pope*, testified as aforesaid, hath bargained, sold, and demised, and by these presents doth, &c. And the said *Pope* hath granted, bargained, sold, demised, ratified, and confirmed; and by these presents doth, &c. unto the said *Mason*, his executors, administrators, and assigns, *All that, &c.* All which said last-mentioned pieces or parcels of wood ground, were by indentures of lease and release, bearing date respectively the 16th and 17th days of June, in the year of our Lord 1779, made between ——— and *Mary* his wife of the one part, and the said *Pope* and *Young* of the other part, granted and released unto the said *Pope* and *Young*, and their heirs and assigns for ever, to the use of the said *Pope* and *Young*, and their heirs and assigns for ever, *In trust*, nevertheless, as to the estate thereby limited to the said *Young*, and his heirs, to the only proper use and behoof of the said *Pope*, his heirs and assigns for ever. *And all that, &c.* All which said last-mentioned messuage or tenement, pieces or parcels of land, were by indentures of lease and release, bearing date respectively the 20th and 21st days of July, in the year of our Lord 1781, made between ——— and ——— of the one part, and the said *Pope* and *Young* of the other part, granted and released unto the said *Pope* and *Young*, their heirs and assigns for ever, to hold to the said *Pope* and *Young*, their heirs and assigns for ever, *In trust*, nevertheless, as to the estate so limited to the said *Young*, and his heirs, to the only proper use and benefit of him the said *Pope*, his heirs and assigns for ever. And all houses, &c. And the reversions, &c. And all deeds, &c. *To have and to hold* the said messuages or tenements, lands, hereditaments, and premises last herein-

hereinbefore granted and demised, with the appurtenances, unto the said *Mason*, his executors, administrators, and assigns, from the day of the date of these presents, for and during, and unto the full end and term of 300 years from thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, yielding and paying therefore yearly, and every year during the said term, unto the said *Pope* and *Young*, their heirs and assigns, the yearly rent of one pepper corn, on the said feast day of Saint John the Baptist, in every year if lawfully demanded, *Subject, nevertheless*, to the proviso for redemption hereinafter contained. *And this indenture further witnesseth*, that for the considerations aforesaid, and of the sum of lawful money of Great Britain by the said *Mason*, at or before the sealing and delivery of these presents to the said *Young* in hand paid, the receipt whereof is hereby acknowledged, He the said *Young*, at the request and by the direction of the said *Pope*, testified as aforesaid, *hath* bargained, sold, and demised, and by these presents *doth*, &c. And the said *Pope* hath granted, bargained, sold, demised, ratified, and confirmed; and by these presents *doth*, &c. unto the said *Mason*, his executors, administrators, and assigns, and to his heirs, *All* that one full and equal undivided moiety or half part, (the whole into two equal parts being divided,) and all other the parts, purparts, shares, and interests of them the said *Pope* and *Young*, or either of them, of and in all that, &c. All which said moiety, of the said last-mentioned messuage, &c. was by indentures of lease and release, bearing date respectively the 16th and 17th days of April, in the year of our Lord 1784, made between the said ——— of the first part, the said *Pope* of the second part, and the said *Young* of the third part, granted and released to and for the use of the said *Young*, his heirs and assigns for ever; In trust, nevertheless, for the said *Pope*, his heirs and assigns for ever, And of and in all houses, &c. And the reversion, &c. And all deeds, &c.

&c. *To have and to hold* the said moiety of the messuage, &c. unto the said *Mason*, his executors, administrators, and assigns, from the day of the date of these presents, for and during, and unto the full end and term of 300 years from thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, *Yielding and paying*, &c. Subject, nevertheless, to the proviso for redemption hereinafter contained.

And this indenture further witnesseth, that for the consideration aforesaid, and in consideration of the sum of 5s. of lawful money of Great Britain by the said *Mason*, at or before the sealing and delivery of these presents to the said *Thompson* in hand paid, the receipt whereof he doth hereby acknowledge; he the said *Young*, at the request and by the direction of the said *Pope* (testified as aforesaid), *both* bargained, sold, and demised; and by these presents *both*, &c. and the said *Pope both* granted, bargained, sold, demised, ratified, and confirmed; and by these presents *both*, &c. unto the said *Mason*, his executors, administrators, and assigns, *All* that the said *Young's* one full and equal moiety or half part, (the whole into two equal parts being divided,) of and in, *All* that, &c. *And all that* the moiety or half part of him the said *Young*, of and in all that full and equal undivided moiety or half part of and in the manor or lordship, or reputed manor or lordship of ———, and of and in the rights, members, and appurtenances thereof and thereunto belonging, situate, &c. All which last-mentioned undivided moiety, of and in the said last hereinbefore mentioned messuage or tenement and lands, now is or lately were let to ——— at the yearly rent of £——. All which said last-mentioned lands, tenements, hereditaments, moieties, and premises, were by indenture of lease and release, &c. granted and released, &c. *To have and to hold* the said messuages, lands, tenements, hereditaments, moiety, and premises, with the appurtenances, hereby demised by the said ——— and *Young* unto the said *Mason*, his executors, administrators,

tors, and assigns, from the day of the date of these presents, for and during, and unto the full end and term of 300 years from thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, yielding and paying therefore yearly during the said term unto the said *Young*, his heirs and assigns, the yearly rent of a pepper corn upon the feast day of Saint John the Baptist, in every year during the continuance of the said term, if the same shall be lawfully demanded, subject to the said proviso for redemption hereinafter contained. *And this indenture further witnesseth*, that for the considerations aforesaid, and in consideration of the sum of 53 of lawful money of Great Britain by the said *Mason*, at or before the sealing and delivery of these presents to the said *Pope* in hand paid, the receipt whereof is hereby acknowledged, the said *Pope* hath granted, bargained, sold, and demised; and by these presents doth grant, bargain, sell, and demise unto the said *Mason*, his executors, administrators, and assigns, *All that* the full and equal undivided moiety or half part of him the said *Mason*, of and in all that one full and equal moiety or half part (the whole into two equal parts to be divided), and all other the parts, shares, and interests whatsoever of him the said *Mason*, of and in all that, &c. All which said moiety of the said last-mentioned messuage, tenements, piece and parcels of land, were by the said indentures, bearing date the 31st day of December, in the year of our Lord 1783, made between — of the first part, — of the second part, — of the third part, — of the fourth part, the said *Pope* of the fifth part, and the said *Young* of the sixth part, assigned and transferred to the said *Pope*, his executors, administrators, and assigns, for all the residue and remainder of two several terms of 999 years, and 499 years, therein respectively mentioned, And of and in all houses, &c. belonging, or in anywise appertaining, or therewith, or with any or either of them, held, used, occupied, or enjoyed, or reputed, deemed, taken,

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or known as part, parcel, or member thereof, or of any part thereof, and the several assignments thereof, and all deeds, evidences, and writings, touching or concerning the title to the said last-mentioned moiety and premises, now in the custody or power of the said *Pope*, or any other person or persons in trust for him, or that he can come by without suit at law or in equity, *To have and to hold* the said moiety or half part of and in the said cottage or tenement, messuage, orchard, garden, piece or parcel of land, and all and singular other the premises hereinbefore demised or granted by the said *Pope*, or expressed and intended so to be with their and every of their appurtenances, unto the said *Mason*, his executors, administrators, and assigns, from the day of the date of these presents, for and during, and unto the full end and term of 300 years from thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, yielding and paying therefore yearly, and every year during the said term of 300 years, unto the said *Pope*, his executors, administrators, and assigns, the yearly rent of one pepper corn on the feast day of Saint John the Baptist, in every year, if lawfully demanded, subject, nevertheless, to the said proviso for redemption hereinafter contained; that is to say, *Provided always*, and these presents are upon this condition, and it is hereby agreed and declared, by and between the said parties to these presents, that if the said *Pope*, his heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, unto the said *Mason*, his executors, administrators, or assigns, without any deduction whatsoever, for or by reason of any taxes or assessments to be taxed or assessed upon the said premises, or any part thereof, or upon the goods, money, or any part thereof, by authority of parliament or otherwise whatsoever, upon the day of now next ensuing, the sum of £2000 of lawful money of Great Britain, and the sum of £1400 of like lawful money, on or before the 29th day of

of

of September now next ensuing; and the further sum of £2000 of like lawful money, on or before the 2d day of February, which will be in the year of our Lord 1787; and the further sums of £1400 and £3529, 13s. 4d. making together the sum of £4929, 13s. 4d. of like lawful money, on or before the 29th day of September, which will be in the said year of our Lord 1787; and the further sum of £2000 of like lawful money, on or before the 2d day of February, which will be in the said year of our Lord 1788; and the further sum of £1400 and £3529, 13s. 4d. making together the sum of £4929, 13s. 4d. of like lawful money, on or before the 29th day of September, which will be in the said year of our Lord 1788; and the further sum of £3529 13s. 4d. residue of the said £20,789, on or before the 29th day of September, which will be in the year of our Lord 1789, without any deduction or abatement whatsoever; or if the said *Pope*, his heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, unto the said *Mason*, his executors, administrators, or assigns, the said three several sums of £2000, and £2000 on the said days or times, and in the manner hereinbefore mentioned for payment of the same respectively, and also instead of the said several payments before mentioned, to be made of the several sums of £1400, £1400, and £1400, upon the 29th day of September 1786, the 29th day of September 1787, and the 29th day of September 1788, respectively, shall and do deposit with and leave in the hands of the said *Mason*, his executors, administrators, or assigns, such several navy bills, and make such payments as are hereinafter mentioned; (that is to say,) if the said *Pope*, his heirs, executors, or administrators, instead of the first of the said payments of £1400, shall and do deposit, assign, and leave in the hands of the said *Mason*, his executors, administrators, or assigns, one or more good and sufficient navy bill or bills for the said sum of £1400, on or before the said 29th day of September 1786; and shall and do upon the 29th day

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day of September, in the year of our Lord 1787, well and truly pay, or cause to be paid, unto the said *Mason*, his executors, administrators, or assigns, the said sum of £1400, together with full lawful interest for the same, (upon the said *Mason*, his executors, administrators, or assigns, returning such navy bill or bills,) such interest to be computed from the said 29th day of September 1786; and if the said *Pope*, his heirs, executors, or administrators, instead of the said payment of the said sum of £1400, shall and do deposit with, assign to, and leave in the hands of the said *Mason*, his executors, administrators, or assigns, on or before the said 29th day of September 1787, one or more good and sufficient navy bill or bills for the said last-mentioned sum of £1400, and shall and do upon the said 29th day of September 1788, well and truly pay, or cause to be paid, unto the said *Mason*, his executors, administrators, or assigns, the said last-mentioned sum of £1400 of lawful money of Great Britain, together with full lawful interest for the same, (upon the return by the said *Mason*, his executors, administrators, and assigns, unto the said *Pope*, his executors, administrators, and assigns, of such last-mentioned navy bill or bills,) such interest to be computed from the said 29th day of September 1787; and if the said *Pope*, his heirs, executors, or administrators, instead of the said third payment of the said sum of £1400, shall and do deposit with, assign to, and leave in the hands of the said *Mason*, his executors, administrators, and assigns, on or before the 29th day of September 1788, one or more good and sufficient navy bill or bills for the said sum of £1400, and shall and do upon the 29th day of September, in the year of our Lord 1789, well and truly pay, or cause to be paid, unto the said *Mason*, his executors, administrators, or assigns, the said last-mentioned sum of £1400 of lawful money of Great Britain, together with full lawful interest for the same, (upon the return by the said *Mason*, his executors, administrators, or assigns, unto the said *Pope*, his executors, administrators, and assigns, of such last-mentioned

mentioned navy bill or bills,) with interest to be computed from the 29th day of September 1788; or if, instead of any one or two of the said payments of £1400 to be made in the manner hereinbefore first mentioned, the said *Pope*, his executors or administrators, shall and do deposit and assign such navy bills, and make such subsequent payments with interest, at such times, and in such manner respectively as aforesaid; and also in that case shall and do well and truly pay, or cause to be paid, the remaining or other of the said sums of £1400; for which such deposit and assignment shall not be made; and also the said three several sums of £2000, £2000, and £2000; and the said three several sums of £3529 13s. 4d. at the several times, and in the manner hereinbefore first mentioned for payment thereof respectively, then and in either or any of those cases; and from and after such payments as aforesaid, shall be well and truly made, according to the true intent and meaning of these presents, all and every the said several and respective terms of 300 years hereinbefore granted and demised, of or in the said several premises respectively, shall cease, determine, and become utterly null and void to all intents and purposes, as if these presents had never been made; any thing hereinbefore contained to the contrary in anywise notwithstanding; and it is hereby mutually declared, concluded, and agreed upon, by and between the said *Mason* and *Pope* for themselves and their several and respective executors, administrators, and assigns, that it shall and may be lawful to and for the said *Mason*, his executors, administrators, or assigns, immediately, or as soon as may be, after such navy bills shall be so deposited with, and assigned to him or them to receive the money therein mentioned, and thereby to be made payable; and out of the money so to be received, to deduct and retain the said several sums of £1400 hereinbefore mentioned, with such interest thereof as is hereinbefore mentioned: And further, that if the said *Mason* should happen to depart this life before the said first day

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day of August 1787; and the whole of the said timber, so as aforefaid sold by the said *Mason* to the said *Pope*, shall not at the time of such decease happen to be cut down, then and in such case these presents shall remain and be a security for the price of such part of the said timber only as shall at the time of the death of the said *Mason* be actually cut down; and the executors and administrators of the said *Mason* shall abate and allow out of the price of the said timber hereinbefore mentioned, so much money as such timber, which shall so happen not to have been felled or cut down, shall be computed to be worth, at the rate agreed by the said *Mason* and *Pope* for the whole of the said timber, the same to be computed and valued by two indifferent persons, one to be chosen by the executors or administrators of the said *Mason*, and the other by the said *Pope*, his executors or administrators, according to and in pursuance of the said two several hereinbefore recited agreements: And the said *Pope* for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said *Mason*, his executors, administrators, and assigns, in manner and form following; that is to say, that the said *Pope* and his heirs, and all and every other person or persons whomsoever, having or lawfully claiming any estate, right, title, or interest of, in, or to the customary or copyhold land hereinafter mentioned, shall and will, at the next court baron or customary court, to be holden in and for the manor of ——— in the county of ———, or at some other special or general court baron, to be holden for the said manor, at the costs and charges of the said *Pope*, well and sufficiently surrender, or cause or procure to be surrendered, into the hands of the lord of the said manor, according to the custom thereof, All that the full and equal moiety or undivided half part of him the said *Pope*, of and in All, &c. And of and in all and singular other the copyhold or customary messuage, lands, tenements and hereditaments, whereof, wherein or whereto the

said *Pope*, or any person or persons in trust for him, are or is seised or entitled for any estate of copyhold or inheritance in possession, reversion, remainder or expectancy, situate within and holden of the said manor of ———, subject, nevertheless, to a like proviso or condition, to be inserted and contained in the said surrender for making the same void, upon payment by the said *Pope*, his executors, administrators or assigns, unto the said *Mason*, his executors, administrators or assigns, of the sum of £—— of lawful money of Great Britain, without any deduction or abatement whatsoever, by such payments, and at such times, and in such manner as in the said proviso or condition hereinbefore contained is mentioned and expressed, for the cesser and determining of the said several terms of 300 years hereinbefore demised or expressed, and intended so to be. And the said *Pope* for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said *Mason*, his executors, administrators and assigns, in manner and form following; that is to say, that he the said *Pope*, his heirs, executors and administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said *Mason*, his executors, administrators or assigns, the said sum of £—— of lawful money of Great Britain, without any deduction or abatement whatsoever, for or by reason or means of any taxes, rates or assessments, to be taxed, rated or assessed on the said premises, or any part thereof, or upon the said money, or any part thereof, by authority of Parliament or otherwise howsoever, on the several days and times, by such installments, and in such parts and proportions as are hereinbefore mentioned for the payment thereof; and also such interest for the said several sums of £——, £—— and £—— as is hereinbefore mentioned, in case such navy bills as hereinbefore mentioned shall be deposited, assigned to and left with the said *Mason*, his executors, administrators or assigns, as hereinbefore is mentioned.

mentioned. *And further*, that the said *Pope* and *Thompson*, at the time of sealing and delivery of these presents, are, or one of them is, lawfully and rightfully seised of a good, sure, perfect and absolute estate of inheritance, in fee-simple, of and in the said messuage or tenement and premises hereinbefore demised by them the said *Pope* and *Thompson*, or expressed and intended so to be: And also, that the said *Pope* and *Young*, at the time of the sealing and delivery of these presents, are, or one of them is, lawfully and rightfully seised of a good, sure, perfect and absolute estate of inheritance, in fee-simple, of and in the said messuage or tenement and premises hereinbefore demised by them the said *Pope* and *Young*, or expressed and intended so to be: And also, that the said *Young*, at the time of the sealing and delivery of these presents, is lawfully and rightfully seised of a good, sure, perfect and absolute estate of inheritance, in fee-simple, of and in the said moiety, lands, tenements and hereditaments hereinbefore demised by him the said *Young*, or expressed and intended so to be: *And that* the said *Pope*, at the time of the sealing and delivering of these presents, is lawfully and rightfully seised of a good, sure, perfect, absolute and indefeazable estate of inheritance, in fee-simple of and in the said messuages, lands, tenements and hereditaments, moiety and premises hereinbefore demised by him the said *Pope*, (except such parts thereof as are hereinbefore mentioned to be leasehold); and as to such parts thereof as are leasehold, that he is possessed thereof, and well entitled thereto, for all the residue and remainder of the said two several terms of 999 years, and 499 years hereinbefore mentioned; and that the same terms are now subsisting terms, in no wise surrendered, forfeited or made void or voidable. *And further*, that the said *Pope* hath, as to the said premises hereinbefore by him demised and granted; and the said *Pope* and *Thompson* have, as to the said premises hereinbefore by them demised; and the said *Young* hath,

bath, as to the said premises hereinbefore by him demised, good right, full power, and lawful and absolute authority to bargain, sell and demise the messuages, lands, tenements and hereditaments hereinbefore by them in manner aforesaid respectively bargained, sold and demised unto the said *Mason*, his executors and administrators, in manner and form aforesaid; and that the said messuages, lands, tenements, hereditaments and premises, with the appurtenances, now are, and at all times, from and after default shall happen to be made of or in payment of the said several sums of money hereinbefore mentioned and covenanted to be paid, or of any or either of them, or any part thereof in manner hereinbefore expressed for payment thereof, shall be, remain and continue free and clear, and freely and clearly acquitted, exonerated and discharged of and from all and all manner of former and other gifts, grants, bargains, sales, mortgages, charges and incumbrances whatsoever at any time heretofore made, done, committed or suffered by them the said *Pope* and *Thompson*, or any or either of them; and that the said *Mason*, his executors, administrators or assigns shall and may from time to time, and at all times after any such default shall happen to be made in payment of any or either of the said several sums or any part thereof, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said messuages, lands, tenements, hereditaments and premises, with the appurtenances, and every part and parcel thereof, for and during the then unexpired residue of the said several terms of years then to come therein respectively, without any lett, suit, trouble, hindrance, molestation, interruption or disturbance of them the said *Pope*, *Thompson* and *Young*, or any or either of them, or any or either of their heirs, executors, administrators or assigns, or of, from or by any other person or persons whomsoever. *And further*, that they the said *Pope*, *Thompson* and *Young*, and each of them,

and

and each and every of their heirs and assigns, and all and every other persons having or lawfully claiming any estate, right, title or interest of, in or to the said messuages, lands, tenements and hereditaments hereby demised or expressed and intended so to be, or any part or parcel thereof, shall and will from time to time, and at all times from and after default shall be made in payment of any or either of the said several sums in the said proviso mentioned, at the times and in manner hereinbefore mentioned for payment thereof, at the costs and charges of the said *Pope*, his heirs, executors and administrators, make, do, acknowledge, levy, suffer and execute all such further and other lawful and reasonable act and acts, deeds, matters and things, devises, conveyances and assurances in the law whatsoever, for the further, better, more perfect and absolute granting, conveying, assuring and sure making all and singular the said messuages, lands, tenements, hereditaments and premises, with the appurtenances unto the said *Mason*, his executors, administrators and assigns, for the then unexpired residue of the said several and respective terms of 300 years hereinbefore demised, therein respectively discharged of the proviso or condition hereinbefore contained for redemption thereof, and of all power and benefit of redemption as by the said *Mason*, his executors, administrators or assigns, or his or their counsel in the law shall be reasonably devised or advised or required. And lastly, it is hereby agreed by and between the said *Mason* and *Pope* for themselves and their several and respective heirs, executors and administrators, that the said *Pope*, his heirs, executors, administrators and assigns, shall and may hold, occupy, possess and enjoy the said lands, tenements, hereditaments and premises, with the appurtenances, and receive and take the rents, issues and profits thereof, to his and their own use and benefit, until default shall be made in payment of the said several sums in the proviso mentioned, or of some of them, or some part thereof, at the
respective

respective times hereinbefore limited for the payment thereof, without any lett, suit, trouble, hindrance or interruption of, by or from the said *Mason*, his executors, administrators or assigns, or any or either of them, any thing hereinbefore contained, to the contrary thereof in anywise notwithstanding. *In witness, &c.*

Bond for payment of the money, and ditto for performance of covenants.

A Conveyance in Fee of a Manor and Hereditaments, and Mortgage for securing Part of the Purchase Money.

THIS INDENTURE, of three parts, made the day of _____, 32. George 3, 1792, Between *Locke*, of, &c. Esq. and _____ his wife of the first part, *Newton* of, &c. and *Pope* of, &c. Esqrs. of the second part, and *Thompson* of, &c. Esq. of the third part. *Whereas* the said *Newton* and *Pope*, at the request of the said *Thompson*, have contracted and agreed with the said *Locke* for the absolute purchase of the manor of _____ and other hereditaments in the county of _____ hereinafter mentioned, to be hereby released, and the inheritance thereof in fee-simple free from incumbrances, at or for the price or sum of £10,000. *And whereas*, the said *Thompson* having signified his desire or wish to the said *Locke*, that he the said *Locke* should accept of the payment of the sum of £5000 in part of the purchase-money, and a security by way of mortgage upon the said manor and other hereditaments for the sum of £5000, the residue thereof; and the said *Locke* having consented to the said proposal, it hath been agreed between and by the said several parties to these presents, that for effecting the arrangement and purposes aforesaid, the said hereditaments should be conveyed and limited in manner hereinafter expressed.

pressed. *Now, therefore, this indenture witnesseth,* that in pursuance and performance of the said recited agreement; and for and in consideration of the sum of £——— of lawful money of Great Britain, paid at or immediately before the sealing and delivery of these presents, by the said *Newton and Pope*, to the said *Locke*, by the direction of the said *Thompson*, (testified by his being a party to and sealing and delivering these presents,) the receipt whereof he the said *Locke* doth hereby acknowledge, and thereof and from every part thereof doth acquit, release, exonerate and discharge the said *Newton and Pope*, and each and every of them, and their, and each of their heirs, executors, administrators and assigns for ever, by these presents; *And* in consideration of the security by way of mortgage hereinafter contained, for the sum of £2000; which said sums of £14,677, 10s. and £2000, amount together to the sum of £16,677, 10s. the money agreed to be paid for the purchase of the said manor and other hereditaments; he the said *Locke*, by the direction of the said *Thompson*, (testified as aforesaid,) hath granted, bargained, sold, aliened, released and confirmed; and by these presents doth grant, bargain, sell, alien, release and confirm unto the said *Newton and Pope*, (in their actual possession now being by virtue of a bargain and sale to them thereof made, in consideration of 5s. by indenture, bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) and their heirs, *All* that the manor or lordship, or reputed manor or lordship of Adeney, otherwise Adney, situate, lying and being in the said county of Salop, with all and singular the rights, royalties, jurisdictions, franchises, privileges, immunities, easements, profits, commodities, advantages, emoluments, rights, members and appurtenances thereto belonging, or in anywise appertaining, or accepted, reputed,

puted, deemed, taken or known as part, parcel or member thereof, or any part thereof; and all and singular the messuages, farms, lands, tenements and hereditaments hereinafter mentioned; (that is to say,) [*Here mention the particulars; and then go on,*] which said messuages or tenements, farms, lands, hereditaments or premises, are part or parcel of the said manor or lordship, or reputed manor or lordship of Adeney, otherwise Adney; And the manor or lordships, or reputed manor or lordships, messuages, farms, lands, tenements, hereditaments and premises were by the direction of the said *Locke* sold to the said *Newton* and *Pope*, by Mr. *Hammer*, by private contract, on the 28th day of March last past, by or referring to a certain printed particular, a copy of which is annexed by way of schedule to this present indenture; and all and singular other hereditaments (if any) in said printed particulars mentioned, and thereby offered for sale. Together with all and singular houses, out-houses, edifices, buildings, stables, byers, coach-houses, cottages, dovecoats, yards, gardens, orchards, backfides, tofts, crofts, lands, meadows, pastures, heaths, moors, marshes, wastes, waste grounds, folds, fold-courses and liberty of foldage, feedings, parks, warrens, commons, common of pasture, common of turbary, mines, minerals, quarries, mills, muletures, customs, tolls, duties, furzes, trees, woods, underwoods, and the ground and soil thereof, mounds, fences, hedges, ditches, freeboards, ways, waters, watercourses, fishings, fisheries, fowlings, courts-leet, courts-baron and other courts, perquisites and profits of courts, view of frank-pledge, and all that to view of frank-pledge doth belong, reliefs, heriots, fines, sums of money, amerciaments, goods and chattels of felons and fugitives, felons of themselves, outlawed persons, deeds, waifs, and estrays, chief-rents, quit-rents, rents-charge, rents-seck, rents of assize, fee-farm, rents, boons, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, commodities, emoluments, hereditaments

hereditaments and appurtenances whatsoever to the said manor or lordship, messuages or tenements, farms, lands, hereditaments and premises belonging, or in anywise appertaining, or with the same or any of them respectively, now or at any time heretofore demised, leased, held, used, occupied or enjoyed, or accepted, reputed, deemed, taken or known as part, parcel or member of them, or of any part of them, or appurtenant thertunto, with their and every of their appurtenances. And the reversion or reversions, remainder and remainders, yearly and other rents, issues and profits of all and singular the manor or lordship, messuages, or tenements, farms, lands, hereditaments and premises hereby granted and released, or intended so to be; and all the estate, right, title, interest, inheritance, reversion, use, trust, possession, property, claim and demand whatsoever, both at law and in equity of him the said *Locke*, of, in and to the same premises, and every or any part or parcel thereof, *To have and to hold* the said manor, messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore particularly mentioned and described, and hereby granted and released, or expressed and intended so to be; and every of them, and every part and parcel thereof, with their, and every of their rights, members and appurtenances unto the said *Newton* and *Pope*, their heirs and assigns, to the use of the said *Locke*, his executors, administrators and assigns, for the term or 2000 years, to be computed from the day next before the day of the date of these presents, and from thenceforth next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, subject nevertheless to the proviso or agreement hereinafter contained, for the redemption of the said manor or lordship, hereditaments and premises; and immediately from and after the end, expiration or sooner determination of the said term of 2000 years; and in the mean time subject thereto, and to the payment of the said sum of £2000, and the

the interest thereof, by these presents secured or intended to be secured on the same premises, by virtue of the said term therein, to the use and behoof of the said *Newton* and *Pope*, their heirs and assigns for ever. And the said *Locke* doth for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said *Newton* and *Pope*, their heirs and assigns, by these presents, that they the said *Locke*, and ——— his wife, shall and will, of the term of Saint Michael next ensuing the date thereof, or of some other subsequent term, acknowledge and levy in due form of law before his Majesty's justices of the court of C. P. at Westminster, unto the said *Newton* and *Pope*, and the heirs of one of them, one fine *sur cognizance de droit come ceo, &c.* of the said manor or lordship, messuages, lands, tenements and hereditaments hereby granted and released, or expressed and intended so to be; and every part and parcel thereof, with their and every of their appurtenances, by such names, quantities, qualities, number of acres, and other descriptions as shall be thought sufficient to ascertain and comprise the same: which said fine shall be ingrossed, recorded and perfected with proclamations, according to the form of the statute in that case made and provided, and according to the usual course of fines for assurance of lands. And it is hereby covenanted and agreed, by and between the said parties to these presents for themselves, severally and respectively, and for their several and respective heirs, and declared to be the true intent and meaning of them and every of them, and also of these presents, that as well the said fines so as aforesaid, or in any other manner, or at any other time to be acknowledged; as also, all and every other fine and fines, recovery and recoveries, conveyances and assurances in the law whatsoever, which already is or are, or hath or have been acknowledged, levied, suffered or executed of the said manor or lordship, messuages, lands, tenements, hereditaments and premises hereby granted and released, or expressed and intended

intended so to be, or any part or parcel thereof, by any person or persons whomsoever, or which shall or may at any time or times hereafter be acknowledged, levied, suffered or executed of the same hereditaments and premises, or any of them, or any part or parcel thereof, by the said *Locke* and *Dorothy* his wife, or either of them, or whereunto they or either of them are, is, shall or may be party or parties, conuzor or conuzors, recoveror or recoverors, either alone or together with any person or persons, manors, messuages, lands, tenements or hereditaments, shall be and enure, and shall be construed, adjudged, deemed and taken to be and enure; and the same is and are hereby declared to be and enure, as to the said manor or lordship, messuages, lands, tenements and hereditaments hereby granted or released, or expressed and intended so to be, and every part and parcel thereof, with their, and every of their rights, members and appurtenances. In the first place, for strengthening, corroborating and confirming the said term of 2000 years hereby created, and subject thereto, to the only proper use and behoof of the said *Newton* and *Pope*, their heirs and assigns for ever; and to and for no other use, trust, intent and purpose whatsoever. And the said *Locke* for himself, his heirs, executors and administrators, doth covenant, promise and agree with and to the said *Newton* and *Pope*, their heirs and assigns, by these presents in manner following: (that is to say,) That for and notwithstanding any act, deed, matter or thing whatsoever, by him the said *Locke*, or any other person or persons whomsoever, made, done, committed, executed, or knowingly or willingly suffered to the contrary; he the said *Locke*, at the time of the sealing and delivering of these presents, is lawfully, rightfully and absolutely seised of and in, or well and sufficiently entitled to the said manor and other hereditaments hereby granted and released, or expressed or intended so to be, and every part thereof, with their rights, members and appurtenances, for a good, sure,

fure, perfect, absolute and indefeasible estate of inheritance in fee-simple, without any manner of condition, use, trust, property, power of reversion, remainder or limitation of any use or uses, or other restraint, cause, matter or thing whatsoever, to alter, change, defeat, incumber, revoke or make void the same. *And* that for and notwithstanding any act, deed, matter or thing as aforesaid, he the said *Locke* now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release and convey the said manor and other hereditaments hereby granted and released, or expressed and intended so to be, with their rights, members and appurtenances thereunto belonging, unto the said *Newton* and *Pope*, their heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents; *And* that it shall and may be lawful to and for the said *Newton* and *Pope*, their heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly, to have, hold, occupy, possess and enjoy the said manor and other hereditaments hereby granted and released, or expressed and intended so to be, with their rights, members and appurtenances; and to have, receive and take the rents, issues and profits thereof, and of every part thereof, to and for his and their own use and benefit, without the lawful lett, suit, trouble, denial, eviction, interruption, claim or demand whatsoever, of or by him the said *Locke* or his heirs, or by any other person or persons whomsoever. *And* that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged or otherwise by the said *Locke*, his heirs, executors and administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, right and title of dower, uses, trusts, entails, wills, statutes merchant, or of the staple, recognizances, judgments, executions, rents, arrears of rent, annuities, legacies,

legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's majesty, and of, from and against all other estates, titles, troubles, charges, debts and incumbrances whatsoever. *And further*, that he the said *Locke* and his heirs, and all and every other person or persons having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, use, trust, property, claim or demand whatsoever, either at law or in equity, of, in, to or out of the said manor and other hereditaments hereby granted and released, or expressed and intended so to be, or any of them, or any part thereof, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and with, and at the proper costs and charges in the law of the said *Newton* and *Pope* and their heirs, make, do, acknowledge, levy, suffer and execute, or cause and procure to be done, acknowledged, levied, suffered and executed. *All* and every such further and other lawful and reasonable act and acts, deed and deeds, thing and things, devises, conveyances and assurances in the law whatsoever, for the further, better, more perfect and absolute granting, conveying, assuring and confirming of the said manor and other hereditaments hereby granted and released, or expressed and intended so to be, and every part thereof, with their rights, members and appurtenances, unto the said *Newton* and *Pope*, their heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said *Newton* and *Pope*, their heirs or assigns, or their counsel learned in the law shall be reasonably devised or advised and required. *Provided always*, and it is hereby agreed and declared, between and by the said *Locke* and the said *Thompson*, and the true intent and meaning of them, and of these presents nevertheless is, that if the said *Thompson*, his heirs, executors, administrators, or the said *Newton* and *Pope*, their heirs or assigns,

assigns, shall and do well and truly pay, or cause to be paid to the said *Locke*, his executors, administrators and assigns, the sum of £2000 of lawful money of Great Britain, and the sum of £100 of like lawful money, as and for one year's interest for the same, at the rate of £5 for £100 for a year, making together the sum of £2100 in the parts, shares or proportions, and on or at the days or times hereinafter mentioned; (that is to say,) the sum of £5, part thereof, (being half a year's interest for the said sum of £2000 at the rate aforesaid,) on the ~~first~~ day of ~~January~~ next ensuing the date of these presents, which will be in the year of our Lord 1793, and the sum of £2050, residue thereof, being the whole of the said principal sum of £2000, and another half year's interest for the same at the rate aforesaid,) on the ~~second~~ day of ~~January~~ then next following, which will be in the said year 1793, without any deduction or abatement whatsoever out of the same or any part thereof, for or in respect of any taxes, charges, rates, assessments, payments or impositions taxed, charged, assessed or imposed, or to be taxed, charged, assessed or imposed on the said manor, hereditaments and premises hereinbefore granted and released, or mentioned or intended so to be, or upon the said sum of £2100, or any part thereof, or upon the said *Locke*, his heirs, executors, administrators or assigns, or any other person or persons whatsoever, for, upon account, or in respect of the said manor, hereditaments and premises, or any of them, or of the said sum of £2100, or any part thereof, by authority of parliament or otherwise howsoever; or for, upon account, or in respect of any other matter, cause or thing whatsoever; then, and immediately thereupon, the said term of 2000 years shall, immediately upon such payment so made as aforesaid, absolutely cease, determine and be void to all intents, effects, constructions and purposes whatsoever. And the said *Thompson* doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said *Locke*, his executors,

executors, administrators and assigns, that he the said *Thompson*, his heirs, executors or administrators, shall and will well and truly pay, or cause to be paid unto the said *Locke*, his executors, administrators or assigns, the aforesaid sum of £2100 in the parts, shares or proportions, and on or at the days or times in the aforesaid proviso or agreement mentioned or appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents. *And moreover*, that if default shall be made of or in payment of the aforesaid sum of £2100, or any part thereof, contrary to the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents; then, and in such case, he the said *Thompson* and his heirs, and *Newton* and *Pope* and their heirs, and all and every other person and persons whatsoever having, or lawfully or equitably claiming, or who shall or may have, or lawfully or equitably claim any estate, right, title or interest of, in or to the said manor, hereditaments and premises hereby granted or released, or mentioned or intended so to be, or any of them, or any part or parts thereof, shall and will, from time to time, and at all times thereafter, upon the request of the said *Locke*, his executors, administrators or assigns, make, do and execute, or cause and procure to be made, done and executed, *All* and every such further and other lawful and reasonable acts, deeds, matters, things, conveyances and assurances in the law whatsoever, for the further, better, more perfect and absolute, limiting, conveying and assuring *all* the said manor, hereditaments and premises hereby granted and released, or mentioned or intended so to be, with their rights, members and appurtenances, unto the said *Locke*, his executors, administrators and assigns, for and during all the rest, residue and remainder, which shall be then to come and unexpired of the said term of 2000 years, as by the said *Locke*, his executors, administrators or assigns, or his or their counsel learned in the law shall be reasonably de-

vised or advised and required. *Provided also*, and it is hereby agreed and declared, between and by the said *Locke* and *Thompson*, and the true intent and meaning of them and of these presents nevertheless further is, that it shall and may be lawful to and for the said *Newton* and *Pope*, their heirs and assigns, peaceably and quietly to have, hold, occupy, possess and enjoy *All* the said manor, hereditaments and premises hereby granted and released, or mentioned or intended so to be, with their rights, members and appurtenances, and receive and take the rents, issues and profits thereof to and for his and their own use, until default shall be made in payment of the said sum of £2100, or any part thereof, contrary to the aforesaid proviso or covenant for payment of the same, and the true intent and meaning of these presents, without any lett, suit, trouble, interruption or disturbance whatsoever of, from or by the said *Locke*, his heirs and assigns, or by any other person or persons whomsoever, lawfully claiming or to claim, by, from or under him, them, or any of them. *Provided also*, and it is hereby agreed and declared between and by the parties to these presents; and the said *Locke* for himself, his heirs, executors and administrators, doth covenant, promise and agree with and to the said *Thompson*, his heirs, executors and administrators, and also to and with the said *Newton* and *Pope*, their heirs, executors, and administrators, by these presents, that if the said *Thompson*, his heirs, executors, administrators or assigns, do and shall, during so long time as the said sum of £2000, or any part thereof, shall remain due and owing to the said *Locke*, his executors, administrators or assigns, upon or by virtue of this present security, well and truly pay, or cause to be paid unto the said *Locke*, his executors, administrators or assigns, interest for the same after the rate of £8 for every £100 by the year, by equal half yearly payments, upon the said day of , and the day of in every year, or within the space of 40 days next after each of the half yearly

yearly payments shall become due, then and in such case, from time to time, when and so often as such payments of interest shall be made within the time or space aforesaid; and not otherwise, he the said *Locke*, his executors, administrators and assigns, shall and will accept of and receive interest for the said principal sum of £200, or such part thereof as shall then remain due or owing to him or them, after the rate of £3 for every sum of £100 by the year, in lieu and full satisfaction of and for the interest of the said sum of £2000, after the rate of £5 for every £100 by the year, hereinbefore provided or covenanted to be paid for the same, any proviso, covenant, or agreement, in these presents, or any thing in a certain bond, or obligation, bearing even date with these presents, and executed and given by the said *Thompson* to the said *Locke* for further securing the payment of the said sum of £2000, and the interest thereof, or in the condition written under the said bond or obligation, to the contrary thereof in anywise notwithstanding. *Provided always* nevertheless, and it is hereby expressly agreed and declared between and by the parties to these presents, *That* if the interest of the said sum of £2000, or any part thereof, shall at any time or times be in arrear or unpaid for the space of 40 days, next after the same ought to be paid, according to the true intent and meaning of these presents; and the interest being so in arrears, the said *Locke*, his executors, administrators, or assigns, shall nevertheless accept interest for the same at a less rate than £5 for £100 by the year; yet he the said *Locke*, his executors, administrators, or assigns, shall not by reason of his or their acceptance of a less rate of interest as aforesaid, be in anywise prevented or precluded from requiring or compelling the payment in future, of interest for the said sum of £2000, or so much thereof as for the time being shall remain due on this present security at the aforesaid rate of £5 for every £100 by the year; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. *And it is hereby further agreed between and by the parties to these presents, That* all and every person or

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persons in whom the manor and other hereditaments hereby granted and released, or expressed and intended so to be, or any of them or any part thereof, now are or is, or hereafter shall or may become vested: and their and his heirs, executors, administrators, and assigns, shall stand and be seized and possessed of and interested in the same respectively according to the nature and quality of the same premises respectively, and of their respective estates and interests therein respectively, *In trust*, for the said *Locke*, his heirs, executors, administrators and assigns, and to convey, assign, or otherwise dispose of the same, respectively, as he or they shall from time direct or appoint; but subject to redemption by the said *Thompson*, his heirs, executors, administrators, or assigns, on payment to the said *Locke*, his executors, administrators, or assigns, of the said sum of £2000; and the interest thereof in manner aforesaid, and according to the true intent and meaning of these presents. *In witness, &c.*

[*The schedule referred to by the above deed.*]

A Special

A Special Transfer of Mortgage, where the Money is paid by two persons; very scientifically drawn.

THIS INDENTURE made the 28th day of July, in the 31st, &c. and in the year of our Lord 1791, *Between Pindar, of, &c. of the first part, Locke, of, &c. of the second part, Newton, of, &c. of the third part, and Milton, of, &c. of the fourth part. Whereas by indentures of lease and release, bearing date respectively the 17th and 18th of August 1777, and made between the said Locke, of the one part, and Watts, of the other part, He the said Locke, for the considerations therein mentioned, Did grant, release, and confirm unto the said Watts, his heirs and assigns [All those, &c.] To hold the same unto and to the use of the said Watts, his heirs and assigns for ever, To be held of the high and chief lord and lords of the fee and fees of the said premises, by and under the rents, duties, suits, and services therefore anciently due and of right accustomed, subject to a proviso or condition, covenant, and agreement in the same indenture contained, for redemption of the premises on payment, by the said Locke, his heirs, executors, administrators, or assigns, unto the said Watts, his executors, administrators, or assigns, of the sum of £. 3800, with interest for the same, after the rate, on or at the days or times, and in the manner therein for that purpose mentioned [Recite another mortgage in fee, dated 5th and 6th March 1783, from Rowe and Watts to Locke, for securing £. 2500 and interest]. And whereas by indentures of lease and release, bearing date respectively the 21st and 22d days of July 1785, the release being of three parts, and made or expressed to be made between the said Watts of the first part, the said Locke of the second part, and the said Pindar of the third part, in consideration of the sum of £. —, to the said Watts paid by the*

said *Pindar*, He the said *Watts*, at the request and by the direction and appointment of the said *Newton*, did bargain, sell, and release, and the said *Locke* did grant, release, and confirm unto and to the use of the said *Pindar*, his heirs and assigns, *All the premises comprized in the said indentures of the 17th and 18th of August 1777, with their appurtenances, subject nevertheless to redemption on payment as therein mentioned of £. 3800 and interest [Here recite another mortgage, bearing even date with the last recited indenture, and made between same parties, for securing to Pindar, upon the hereditaments comprized in the secondly recited mortgage, the sum of £. 3000]. And whereas the said Locke is seised of or intitled to the manor and advowson of ———, in the said county of ———, and of or to several messuages and other hereditaments, situate, lying, and being in the parish of ———, in the same county, not comprized in the said hereinbefore in part recited indentures, or any of them, for an estate of inheritance in fee simple. And whereas all interest which hath accrued, or become due to the said *Pindar*, for the said two several sums of £. 3800 and £. 3000, hath been paid by the said *Locke* to the said *Pindar* up to the day of the date of these presents, and the said principal sums of £. 3800 and £. 3000 only now remain due and owing upon or by virtue of the said mortgages or securities respectively, which he the said *Pindar* doth hereby acknowledge. And whereas the said *Locke*, having occasion for the sum of £. 10,000, for the purpose of enabling him to pay off and discharge the said sums of £. 3800 and £. 3000, and for supplying his other occasions, hath applied to the said *Newton* and *Milton*, to advance and lend him the said *Locke* the said sum of £. 10,000, and the said *Newton* hath accordingly agreed to advance and lend him the sum of £. 5000, and the said *Milton* hath accordingly agreed to advance and lend him the like sum of £. 5,000, (which said sums of £. 5000 and £. 5000, make together the sum of £. 10,000) upon having the repayment thereof respectively, with interest*

interest for the same respectively in the mean time secured in the manner hereinafter mentioned. *Now therefore this indenture witnesseth*, that for and in consideration of the sum of £.6800, being the amount of the said sums of £.3800 and £.3000, of lawful money of Great Britain, to the said *Pindar*, at or immediately before the sealing and delivery of these presents, by the said *Newton* in hand well and truly paid, at the request and by the direction of the said *Locke*, testified by his being a party to and sealing and delivering these presents (the receipt of which said sum of £.6800, the said *Pindar* doth hereby acknowledge, and doth declare that the same is in full of all money in any wise due or owing to him, on or by virtue of the aforesaid mortgages or securities, of the 21st and 22d days of July 1785, and from the same sum of £.6800, and every part thereof, doth release, acquit, and discharge the said *Newton*, his heirs, executors, administrators, and assigns, and also the said *Locke*, his heirs, executors, and administrators, for ever by these presents. And in consideration of the sum of £.5000, by the said *Newton*, and the sum of £.5000, by the said *Milton*, to or upon the account of the said *Locke* paid as hereinafter is mentioned, And also in consideration of 10s. of like lawful money of Great Britain, by the said *Milton* to the said *Pindar*, paid, at or before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, He the said *Pindar*, (at the request and by the direction of the said *Locke*, testified as hereinbefore is mentioned) and according to the estate and interest of him the said *Pindar*, in the hereditaments hereinafter mentioned to be hereby released, And so far as he the said *Pindar*, can and ought to do, both at law and in equity, Hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm, unto the said *Newton* and *Milton* (in their actual possession now being, by virtue of a bargain and sale to them thereof made by the said *Pindar*, in consideration

N. B. There must be a separate lease for a year of these estates.

deration of gr. a piece, by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day of the date of the same indenture of bargain and sale, and by force of the statute made for the transferring of uses into possession) and their heirs, *All* and every the manors, advowsons, messuages, lands, tenements, hereditaments, and all and singular other the premises, which by the said two several indentures of lease and release, bearing date respectively the 21st and 22d days of July 1785, were conveyed, or intended to be conveyed unto and to the use of the said *Pindar*, his heirs and assigns, by way of mortgage as hereinbefore is mentioned, and with their rights, members, and appurtenances, and the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the premises hereby released, or expressed and intended so to be, and every of them, and every part and parcel thereof, And all the estate, right, title, interest, use, trust, possibility, property, claim, and demand whatsoever, both at law and in equity, of him the said *Pindar*, of, in, to, from, out, and upon the same premises, and every part and parcel thereof, *To have and to hold* the said manor, advowson, messuages, lands, tenements, and other the premises hereby granted and released, or expressed and intended so to be, with their rights, members, and appurtenances, unto the said *Newton* and *Milton*, their heirs and assigns, to the uses and subject to the provisos, conditions, and agreements hereinafter limited and declared of and concerning the same. And the said *Pindar*, for himself, his heirs, executors, and administrators, *Doth* covenant and declare with and to the said *Newton* and *Milton*, their heirs and assigns, by these presents, that he the said *Pindar*, hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby or by reason

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or means whereof the said manor, advowson, messuages, lands, hereditaments, and premises hereby released, or expressed and intended so to be, or any part or parcel thereof, are, is, can, shall, or may be impeached, charged, or incumbered in title, estate, or otherwise howsoever. *And this indenture also witnesseth*, that for and in consideration of £———, for by the said *Newton* to the said *Pindar* paid as hereinbefore is mentioned, and of the sum of £———, of such lawful money as aforesaid, to or on the account of the said *Locke*, in hand well and truly paid by the said *Newton*, at or immediately before the sealing and delivery of these presents, the payment and receipt of which said sums of £——— and £———, amounting together to the sum of £.5000, the said *Locke* doth hereby acknowledge, and from the same and every part thereof, doth acquit, release and discharge the said *Newton*, his heirs, executors, administrators and assigns for ever, by these presents. *And also*, for and in consideration of the sum of £5000 of like lawful money of Great Britain, to or on account of the said *Locke*, well and truly paid by the said *Milton*, at or immediately before the sealing and delivery of these presents, the receipt of which said last mentioned sum of £5000, the said *Locke* doth hereby acknowledge, and from the same and every part thereof, doth acquit, release and discharge the said *Milton*, his heirs, executors, administrators and assigns for ever by these presents: He the said *Locke* hath granted, bargained, sold, aliened, released and confirmed, *And* by these presents doth grant, &c. unto the said *Newton* and *Milton*, (in their actual possession now being by virtue of a bargain and sale, &c.) All and every the manor, advowson, messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore mentioned to be hereby released by him the said *Pindar*, and every part or parcel thereof, with their and every of their rights, members and appurtenances. *And also all that, &c. And all other the lands, tenements and hereditaments of or*

to which he the said *Locke*, or any other person or persons in trust for him, are or is seized and entitled for any estate of freehold or inheritance, situate, lying and being in, &c. or any of them, in the said county of ———— All which said manor, advowson, barton, messuages, tenements, and other hereditaments hereinbefore mentioned to be hereby released by him the said *Locke*, and the names of the present tenants or occupiers thereof, according to the present denominations and state of the same, are particularly mentioned and set forth in the schedule hereunder written or hereunto annexed, *Together* with all and singular houses, outhouses, edifices, buildings, stables, byers, cottages, dovecotes, yards, gardens, orchards, backfides, tofts, crofts, lands, meadows, pastures, heaths, moors, marshes, wastes, waste ground, folds, fold-courses, and liberty of foldage, feedings, parks, warrens, commons, common of pastures, common of turbary, mines, minerals, quarries, mills, mulctures, customs, tolls, duties, furzes, trees, woods, underwoods, and the ground and soil thereof, mounds, fences, hedges, ditches, freeboards, ways, waters, water-courses, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, perquisites and profits of courts, view of frankpledge, and all that to view of frankpledge doth belong, reliefs, heriots, fines, sums of money, amerciaments, goods and chattels of felons and fugitives, felons and fugitives of themselves, outlawed persons, deodands, estrays, chief rents, quit rents, rents charge, rents seck, rents of allize, fee farm rents, boons, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever, to the said manor or lordship, advowson, messuages, or tenements, farms, lands, hereditaments and premises, belonging, or in anywise appertaining, or with the same or any of them respectively, now or at any time heretofore demised and leased, held, used, occupied or enjoyed, or accepted, reputed, deemed, taken or known, as
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part, parcel or member of them, or any part of them; or appurtenant thereunto, with their and every of their appurtenances. And the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of all and singular the premises hereby released, or expressed and intended so to be: And all the estate, right, interest, inheritance, use, trust, possession, possibility, property, claim and demand whatsoever, both at law and in equity of him the said *Locke* of, in, to, from, out of and upon the same premises, and every part and parcel thereof, *To have and to hold* the manor, advowson, barton, messuages, lands, hereditaments, and all and singular other the premises hereinbefore mentioned and intended so to be hereby granted and released by him the said *Locke*, and every part and parcel thereof, with their and every of their rights, members and appurtenances, unto the said *Newton* and *Milton*, their heirs and assigns, *To the uses* and subject to the provisos, conditions and agreements hereinafter limited, expressed and declared of and concerning the same; that is to say, It is hereby agreed and declared between and by the parties to these presents, that the grants, releases and confirmations hereby respectively made as aforesaid; and all other conveyances and assurances of the said manor and other hereditaments hereby granted and released, or expressed and intended so to be, or any of them shall operate and enure, *As to one undivided moiety*, or one equal half part or share (the whole into two equal half parts or shares being divided) of and in the manor and other hereditaments hereinbefore mentioned to be hereby released; and of and in the rights, members and appurtenances thereunto belonging, *To the use* and behoof of the said *Newton*, his executors, administrators and assigns, from the day next before the day of the date of these presents, for, and during and unto the full end and term of 500 years thenceforth next ensuing, and fully to be compleat and ended, without impeachment of or for any manner of waste;

waste; but subject to the proviso, or condition, covenant and agreement hereinafter contained, for determining or making void the said term of 500 years: *And immediately from and after the expiration or sooner determination of the said term of 500 years, and in the mean time subject thereto, To the use of the said Milton, his heirs and assigns; but subject to the proviso, or condition, covenant or agreement hereinafter contained for determining and making void the use or estates so hereby limited to the said Milton, his heirs and assigns: And as to the other undivided moiety, or other equal half part or share (the whole into two equal parts or shares being divided) of or in the manor and other hereditaments hereinbefore mentioned to be hereby released, and of and in the rights, members and appurtenances thereunto belonging, To the use and behoof of the said Milton, his executors, administrators and assigns, from the day next, &c. for and during and unto the full end and term of 500 years, thenceforth next ensuing and fully to be compleat and ended, without impeachment of and for any manner of waste; but subject to the proviso, or condition, covenant and agreement hereinafter contained, for determining and making void the said last mentioned term of 500 years: And immediately from and after the expiration or sooner determination of the last mentioned term of 500 years, and in the mean time subject thereto, To the use of the said Newton, his heirs and assigns; but subject to the proviso, or condition, covenant and agreement hereinafter contained, for determining and making void the use or estate so hereby limited to the said Newton, his heirs and assigns. Provided always, and it is hereby agreed and declared between and by the said Newton and Locke, and the true intent and meaning of them and of these presents nevertheless is, that if the said Locke, his heirs, executors, administrators or assigns, do and shall well and truly pay, or cause to be paid, unto the said Newton, his executors, administrators or assigns, the sum of £5000 of lawful money of Great Britain, and the sum of £250 of like lawful money,*

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ney, as and for one year's interest for the same sum of £5000, after the rate of £5 for £100 by the year, making together the sum of £5250, in the parts, shares and proportions, and on or at the days or times hereinafter mentioned; that is to say, the sum of £125, part thereof, being one half year's interest for the said sum of £5000, at the rate aforesaid, on the day of December next ensuing the date of these presents; and the sums of £5125, being the whole of the said principal sum of £5000, and another half year's interest for the same, at the rate aforesaid, on the day of which will be in the said year of our Lord Christ 1792, without any deduction or abatement whatsoever out of the same, or any part thereof, for or in respect of any taxes, charges, rates, assessments, payments or impositions, taxed, charged, assessed, or imposed on the hereditaments and premises hereby released, or any of them, or any part or parts thereof respectively, or upon the said sum of £5000, or the interest thereof, or any part thereof respectively, or upon the said *Newton*, his heirs, executors, administrators or assigns, or any other person or persons whomsoever, for, upon account, or in respect of any other matter, cause, or thing whatsoever; then and in such case, as well the use or estate hereby limited to the said *Newton*, his executors, administrators and assigns, for the term of 500 years, hereby created in the firstly hereinbefore mentioned moiety, or equal half part or share of the said manor, barton, and other hereditaments, as the use or estate hereby limited to the said *Newton*, his heirs and assigns, in the secondly hereinbefore mentioned moiety, or equal half part or share of the said manor, barton, and other hereditaments, shall cease, determine and be absolutely void, to all intents, effects, constructions and purposes whatsoever. *Provided also*, and the said *Newton* doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said *Locke*, his heirs, executors, administrators and assigns, by these presents, and the true intent and meaning of them, and of these presents nevertheless

APPENDIX.

nevertheless is, that in the mean time, and until some one half yearly payment of the interest of the said sum of £5000, shall be in arrear or unpaid, by the space of three calendar months, he the said *Newton*, his heirs, executors, administrators and assigns, shall and will accept and take interest for the same sum of £5000, at the rate of £4 5s. for £100, for a year, any thing hereinbefore contained to the contrary thereof notwithstanding. *Provided also*, and it is hereby further agreed and declared between and by the said *Newton* and *Locke*, that if at any time or times, whilst the said principal sum of £5000, or any part thereof, shall remain and continue upon this present security, the interest for the said sum of £5000, or so much thereof as shall for the time being remain and continue upon this present security, shall be in arrear and unpaid, for the space of three calendar months next after the day or time whereon any half year's interest shall from time to time become due and payable: And the interest being so in arrear, the said *Newton* shall nevertheless accept or take, in respect of such arrear of interest, any less sum than after the rate of £5 for £100, for a year: And if it shall so happen that the interest for the said sum of £5000, or any part thereof, shall at any subsequent time or times be in arrear and unpaid for the space of three calendar months next after the day or time whereon half a year's interest thereof shall from time to time become due and payable: Then and in such case the said *Newton*, his heirs, executors or administrators, shall not by reason of his or their having at any time or times preceding, accepted or taken interest after any less rate than £5 for £100, for a year, for the said sum of £5000, or any part thereof, be precluded or prevented from demanding, recovering and receiving of and from the said *Locke*, his heirs, executors, administrators or assigns, interest for the said sum of £5000, or so much thereof as for the time being shall remain and continue upon this present security, at the rate of £5 for every £100, by the year, for every such half year, for which such last mentioned

tioned interest shall be so unpaid to him the said *Newton*, his executors, administrators or assigns, for the space of three calendar months next after the day or time whereon such half year's interest shall from time to time become due or payable, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. [*Exactly similar provisos as to the payment of Milton's £5000*] And the said *Locke* doth for himself, his heirs, executors, and administrators, hereby covenant, promise, and agree with and to the said *Newton*, his executors, administrators, and assigns, that he the said *Locke*, his heirs, executors, administrators or assigns, shall and will well and truly pay, or cause to be paid, unto the said *Newton*, his executors, administrators or assigns, the sum of £5000, intended to be hereby secured, to be paid to him the said *Newton*, his executors, administrators or assigns, with interest, as hereinbefore is mentioned; and the interest to become due for the same, after the rate in the parts, shares and proportions, and on or at the days and times in the proviso first hereinbefore inserted of and concerning the same, mentioned and appointed for the payment of the interest thereof respectively, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents. [*Here insert a similar covenant from Locke to Milton for the payment of his £5000.*] And the said *Locke* doth for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said *Newton* and *Milton*, their heirs and assigns, by these presents in manner following: that is to say, that they the said *Locke* and *Pindar* now have in themselves respectively, good right, power and lawful and absolute authority to grant, release and confirm the manor and other hereditaments hereinbefore mentioned to be hereby granted, released and confirmed respectively, and every of them and every part thereof, respectively, to the uses and in manner aforesaid, according to the true intent and meaning of these presents. And that, if default shall happen to be made in payment of the said sum of £5000, or

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the interest thereof, hereby secured to the said *Newton*, his executors, administrators and assigns, as hereinbefore is mentioned, or any part thereof respectively, contrary to the true intent and meaning of these presents; then and in such case it shall and may be lawful to and for the said *Newton*, his executors, administrators and assigns, peaceably and quietly to have, hold and enjoy the undivided moiety and other the premises hereby limited, in use to the said *Newton*, his heirs, administrators and assigns, for the first hereinbefore created term of 500 years; and to receive and take one equal half part or share of the rents and profits of the entirety of the manor and other hereditaments hereinbefore mentioned to be hereby released to and for his and their own use and benefit, for and during all the residue and remainder which shall be then to come and unexpired of the first hereinbefore created term of 500 years: And then also and in such case it shall and may be lawful to and for him the said *Newton*, his heirs and assigns, peaceably and quietly to have, hold and enjoy the undivided moiety and other hereditaments hereby limited in use to the said *Newton*, his heirs and assigns, (subject to the last hereinbefore created term of 500 years, and to the payment of the said sum of £5000, and the interest thereof, by these presents secured, or intended to be secured to the said *Milton*, by virtue of the same term.) And further that if default shall happen to be made in payment of the sum of £5000, or the interest thereof, hereby secured to the said *Milton* [*Exactly the same as the last covenant to Newton.*] And that free and clear, and freely and absolutely acquitted, exonerated and discharged or otherwise, by the said *Locke*, his heirs, executors or administrators, saved, protected, kept harmless, and indemnified of, from and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, uses, trusts, wills, entails, annuities, rents, rent charges, rents-seek and arrears of rents, fines, issues, amerciaments, statutes, recognizances, judgments, extents, executions, seizures, sequestrations,

sequestrations, and all other estates, titles, troubles, charges and incumbrances whatsoever: *And further*, that if default shall be made in payment of the sum of £5000, and the interest thereof, hereby secured, to be paid to the said *Newton*, his heirs, executors, administrators and assigns, as hereinbefore is mentioned, or any part thereof, according to the true intent and meaning of these presents; then and in such case he the said *Locke*, his heirs and assigns, and all and every other person and persons whomsoever, having or lawfully or equitably claiming, or who shall or may lawfully or equitably claim any estate, right, title, or interest of and to the moiety and other the premises hereby limited in use to the said *Newton*, for the first hereinbefore created term of 500 years, or of, in or to the moiety and other hereditaments hereby limited in use to the said *Newton*, his heirs and assigns, (subject as hereinbefore is mentioned) shall and will from time to time, and at all times hereafter, upon the request of the said *Newton*, his heirs, executors, administrators or assigns respectively; but at the proper costs and charges of the said *Locke*, his heirs or assigns, make, do and execute, or cause and procure to be made, done and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, conveyances and assurances in the law whatsoever, for the further and better, more perfectly and absolutely limiting, assuring and confirming the undivided moiety and other the premises, comprised in the first hereinbefore created term of 500 years, unto the said *Newton*, his executors, administrators or assigns, for and during all the residue and remainder which shall be then to come and unexpired of the same term of 500 years: *And for the further and better limiting and assuring and confirming unto the said *Newton*, his heirs and assigns, the undivided moiety and other hereditaments hereby limited in use to the said *Newton*, his heirs and assigns, (subject as hereinbefore is mentioned) as by the said *Newton*, his executors, administrators, or assigns respectively, or his or their respective*

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tive counsel in the law, shall be reasonably devised, or ad-
 vised and required: *And moreover, that if default, &c. [An
 exactly similar covenant to the last, from Locke to Milton.] Pro-
 vided also, and it is hereby agreed and declared between
 and by Newton, Milton and Locke, and the true intent and
 meaning of them and of these presents nevertheless is,
 That until default shall be made in payment of the said
 sum of £5000 and £5000, or one of them, or the interest
 thereof respectively, or some part thereof respectively,
 contrary to the true intent and meaning of these presents,
 the manors and other hereditaments hereinbefore men-
 tioned to be hereby released, shall and may be peaceably
 and quietly had, holden and enjoyed, and the rents, issues
 and profits thereof, had, received and taken by the said
 Locke, his heirs and assigns, without any let, suit, trouble,
 denial, eviction or interruption of, from or by the said
 Newton and Milton, or either of them, their or either of
 their heirs or assigns, or any other person or persons
 whomsoever, claiming or to claim by, from, under, or in
 trust for them, either or any of them, according to the
 true intent and meaning of these presents. In witness, &c.*

*Conveyance in Trust to sell in case of Default in Payment of
 the two principal Sums and Interest, or either of them, secured
 by the foregoing Mortgage.*

THIS INDENTURE, made the 1st day of July 1791,
 Between Locke of, &c. Esq. of the first part, Newton of, &c. of
 the second part, Milton of, &c. Esq. of the third part, Gray
 and Thomp'son both of —, in the county of —, Esqrs,
 of the fourth part. Whereas, by indentures of lease and
 release, bearing date respectively the 28th and 29th days
 of June, now last past, and made, or expressed to be
 made, between —, the younger, of —, Esq.,
 of the first part, the said Locke of the second part, the said

Newton

Newton of the third part, and the said *Milton* of the fourth part, in consideration of the sum of £5000, by the said *Newton*, and of the sum of £5000 by the said *Milton*, to or upon the account of the said *Locke*, paid as in the indenture of release now in recital is expressed, *All these, &c.* And all those several yearly, chief, quit, fee-farm, or other rents issuing and payable out of, from or for divers lands and hereditaments, lying and being in the said manor of ———, amounting together to £——, by the year, or thereabouts. And all that the advowson, right of patronage, and presentation of and to the church of ———, aforesaid, with the rents, rights, and appurtenances thereto belonging; and all and singular the messuages, or tenements, lands, and hereditaments of the said *Locke*, situate and being within, or being part or parcel of the said manor of ———, or deemed or reputed to be, all which said manor and likewise the rents, amounting together to £—— a year, or thereabouts; and the said advowson, right of patronage, and presentation of and to the church of ———, and other the premises thereinbefore mentioned; were upon a partition, made in the year 1744, in pursuance of a decree of the High Court of Chancery, allotted (amongst other estates) to ———, since deceased, who was one of the two daughters and coheirresses of ———, heretofore of ———, in the said county of, &c. (since deceased) which partition was confirmed by an act of parliament, made and passed in the 28th year of his late Majesty King George II. and the said premises were, by deeds of bargain and sale, dated ———, enrolled in chancery, granted and conveyed by ———, Esq. unto and to the use of the said *Locke*, his heirs and assigns, for ever, with the appurtenances. And all other the lands, tenements and hereditaments of or to which by the said *Locke*, or any person or persons, *In trust*, for him, are or is seized or entitled for any estate of freehold or inheritance, situate, lying, and being, &c. or any of them, in the said county of ———, or any of them, in the said county

county of ———, *All* which said manor, advowson, barton, messuage, tenements, and other hereditaments, herebefore mentioned to be hereby released by the said *Locke*, and the names of the present tenant or occupiers thereof, according to the present denomination and state of the same, are particularly mentioned and set forth in the schedule hereunder written or hereunto annexed, *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of all and singular the manor or lordship, messuages or tenements, farms, lands, hereditaments, and premises, hereby granted and released, or intended so to be; *And all* the estate, right, title, interest, reversion, use, trust, possession, property, claim, and demand whatsoever, both at law and in equity of him the said *Locke*, of, in, and to the same premises, and every or any part or parcel thereof, have been conveyed unto the said *Newton* and *Milton*, and their heirs, to the uses hereinafter mentioned, that is to say, As to one undivided moiety, or one equal half part, or share (the whole into two equal half parts or shares to be divided, or reputed or considered as divided) of and in the said manor and other hereditaments, *To the use* of the said *Newton*, his executors, administrators, and assigns, for and during the term of 500 years, without impeachment of waste, subject to the proviso, or condition, covenant, and agreement, in the said indenture of release contained, and hereafter mentioned, for determining and making void the said term of 500 years. *And* after the expiration or sooner determination of the said term of 500 years, and in the mean time subject thereto, *To the use* of the said *Milton*, his heirs and assigns; but subject to the proviso, or condition, covenant, and agreement, therein contained and hereinafter mentioned, for determining and making void the use or estate, so thereby limited to the said *Milton*, his heirs and assigns. *And* as to the other undivided moiety, or other equal half part or share (the whole in two equal half parts or shares to

be divided, or reputed or considered as divided) of and in the said manors and other hereditaments, *To the use of the said Milton*, his executors, administrators and assigns, for and during the term of 500 years; but subject to the proviso, or condition, covenant, and agreement, in the said indenture contained and hereinafter mentioned, for determining or making void the said last mentioned term of 500 years. *And immediately from and after the expiration, or sooner determination of the said last mentioned term of 500 years, and in the mean time subject thereto, To the use of the said Milton*, his heirs and assigns; but subject to the proviso, or condition, covenant, and agreement, in the same indenture contained and hereinafter mentioned for determining the use or estate so thereby limited to the said *Newton*, his heirs or assigns. *And in the said indenture of release is contained a proviso, or condition, covenant, or agreement, whereby it is provided, agreed, and declared, that if the said Locke*, his heirs, executors, administrators, or assigns, shall and will truly pay, or cause to be paid, unto the said *Newton*, his executors, administrators, or assigns, the sum of £5000, with interest for the same, after the rate and at the days and times, and in manner as in the said indenture of release is mentioned for payment thereof respectively: *Then, and in such case, as well the use or estate, thereby limited to the said Newton*, his executors, administrators, and assigns, for the term of 500 years, in the first therein and hereinbefore mentioned moiety, or equal half part or share of the said manor, barton, and other hereditaments, as the use or estate thereby limited to the said *Milton*, his heirs and assigns, in the secondly therein and hereinbefore mentioned moiety, or equal half part or share of the said manor, barton, and other hereditaments, shall now determine and be absolutely void, *And in the said indenture of release is also contained a proviso, or covenant, declaration, or agreement, whereby it is provided, agreed, and declared, that, if the said Locke*,
his

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his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, unto the said *Milton*, his executors, administrators or assigns, the sum of £500, with interest for the same, after and at the times and in manner in the said indenture, now in recital, is mentioned for payment thereof respectively; *Then* and in such case, as well the use or estate, hereby limited to the said *Milton*, his executors, administrators or assigns, for the term of 500 years, as the secondly hereinbefore mentioned moiety or equal half part or share of the said manor, barton and other hereditaments, as the use or estate, hereby limited to the said *Milton*, his heirs and assigns, in the first hereinbefore mentioned moiety of the said manor, barton, and other hereditaments, shall determine and be absolutely void. *And whereas* the said *Locke*, previously to the advancing and lending to him of the said several sums of £— and £—, did agree to convey and assure the said manor, barton, and other hereditaments, by the hereinbefore recited indentures of lease and release, granted, released, and confirmed, with their appurtenances, unto and to the use of the afore said —, and their heirs, upon and for the trusts hereinafter declared or expressed of or concerning the same. *Now this indenture witnesseth*, that in pursuance and performance of the said agreement, and for and in consideration of the sums of £— and £—, to by the said *Newton* and *Milton*, to or on the account of the said *Locke*, paid as in the said indenture of release is mentioned; and for the further and more effectually securing the repayment of the same, and the interest thereof respectively, *And also* for and in consideration of the sum of 10s. of good and lawful money of Great Britain, to the said *Locke*, by the said —, paid at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; he the said *Locke*, at the request and with the power and approbation of the said *Newton* and *Milton*, signified by them severally, being parties to and

sealing

sealing and delivery of these presents, *hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents, *doth* grant, bargain, sell, alien, release, and confirm unto the said ———, in their actual possession now being, by virtue of a bargain and sale to them made by the said *Locke*, in consideration of 5*l*. by indenture, bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the said indenture of bargain and sale; and by force of the statute made for transferring uses into possession, and their heirs, all and every the manor, advowson, barton, messuages, tenements, lands, hereditaments, and all and singular other the premises, by the hereinbefore in part recited indentures of lease and release, granted and conveyed unto the said *Newton* and *Milton* and their heirs, as in the said indenture of release, and hereinbefore is mentioned with their rights, members, and appurtenances, *To have and to hold* all and every the said manor, advowson, barton, messuages, tenements, lands and hereditaments, and other the premises, hereby released or mentioned and intended so to be, with their and every of their appurtenances, (but subject and charged as hereinbefore is mentioned and released) unto the said ———, and their heirs, *To the use of* the said ———, their heirs and assigns, upon and for the trusts, intents and purposes, and with, under and subject to the powers, provisos, declarations, and agreements, hereinafter declared and expressed of or concerning the same. *And* it is hereby declared and agreed, that the said manor, advowson, barton, messuages, tenements, lands, hereditaments and premises, are by these presents conveyed and assured, or intended to be conveyed and assured, unto and to the use of the said ———, and their heirs. *And* that they the said ———, and their heirs, shall, by virtue of these presents, stand and be seized of all the said manors, advowson, barton, messuages, tenements, lands, hereditaments and premises, hereinbefore released or mentioned

tioned or intended so to be, with their rights, members, and appurtenances, upon and for the trusts, intents, and purposes; and with, under, and subject to the provisos, declarations, and agreements, hereinafter mentioned and expressed of or concerning the same, (that is to say) *In trust* for the said *Locke*, his heirs and assigns, until the said *Locke*, his heirs, executors, administrators, or assigns, shall make such default, as hereinafter is expressed, in payment of the said sums of £—— and £——, or one of them, or some part thereof respectively. *And* upon the further trust, that in case he the said *Locke*, his heirs, executors, administrators, or assigns, shall not pay, or cause to be paid, unto the said *Newton*, his executors, administrators, and assigns, the sum of £5000, intended to be secured to him or them, by the said hereinbefore in part recited indenture of lease and release, and the interest thereof, on or at the days or times, and in the manner mentioned and appointed for the payment of the same respectively, in the said indenture of release; *And* shall not pay, or cause to be paid, unto the said *Milton*, his executors, administrators, or assigns, the sum of £5000, intended to be secured to him and them, by the said hereinbefore in part recited indentures of lease and release, and the interest thereof, on or at the days and times, and in the manner in the said indenture of release mentioned and appointed for payment thereof respectively. *And* the said *Newton*, his executors, administrators, or assigns, shall at any time, while the sum of £5000 so intended to be secured to him and them as aforesaid, or any part thereof, shall remain and continue due on his aforesaid securities for the same, by any writing or writings, under his or their hand or hands, call in and require payment of the same, or the said *Milton*, his executors, administrators, or assigns, shall at any time, while the sum of £5000 so intended to be secured to him and them as aforesaid, or any part thereof shall remain and continue due in his aforesaid securities for the same, by any writing or writings, under his or their

their hand or hands, call in and require payment of the same. And the said *Locke*, his heirs, executors, administrators, or assigns, shall not, within the space of six calendar months, to be computed from the day on which the said sum of £—— or such of them or such part thereof respectively, as shall be so called in, or the payment whereof shall be so required; pay and discharge the same respectively; *Then and in such case*, immediately upon such neglect or default of payment as aforesaid, or at any time or times afterwards, they the said ——, or the survivor of them, or the heirs or assigns of such survivor, shall and do with all convenient speed, either with or without the consent of the said *Locke*, or any other person or persons, sell and dispose of the said manor, advowson, barton, messuages, tenements, lands, hereditaments, and premises, hereby released or expressed and intended so to be, with their rights, members, and appurtenances, and the inheritance thereof, in fee-simple, either together or in parcels, by sale, or auction, or private contract, unto any person or persons who shall be willing to become and be the purchaser and purchasers of the same manor, advowson, barton, messuages, tenements, lands, hereditaments, and premises, or any of them, for such price or prices, in money, as to the said ——, or the survivor of them, or the heirs or assigns of such survivor, shall seem reasonable, and do and shall for that purpose make, do, enter into and execute all such contracts, covenants, agreements, acts, deeds, conveyances, and assurances, as they the said ——, or the survivor of them, or the heirs or assigns of such survivors shall think fit and do, and shall stand and be possessed of the money arising by such sale or sales as aforesaid, upon and for the trusts, intents and purposes, hereinafter declared, of or concerning the same; and it is hereby agreed and declared between and by the said parties to these presents, and their true intent and meaning is, that all such contracts, covenants, and agreements, acts, deeds, conveyances

alices and assurances, which shall be made, done, entered
 into, and executed by the said ———, or the survivor of
 them, or the heirs or assigns of such survivor, with or
 to the purchaser or purchasers of the said manor, advow-
 son, barton, messuages, tenements, lands, hereditaments,
 and premises, or any part or parcel thereof, or respecting
 the same, shall to all intents and purposes whatsoever be
 as valid and effectual in the law, made without the con-
 currence or the privity, and even against the consent of
 the said *Locke*, his heirs, executors, administrators, or
 assigns, as such contracts, covenants, agreements, acts,
 deeds, conveyances, and assurances, would have been, if
 the said *Locke*, his heirs, executors, administrators, or as-
 signs, had joined therein and concurred thereto, or duly
 executed the same: And that the purchaser and purchasers
 of the manor, advowson, barton, messuages, lands, tene-
 ments, hereditaments, and premises, hereby released, or
 expressed and intended so to be, or any of them, or any
 part thereof; and all and every persons and person claim-
 ing by, from, through, or under him, them, or any of
 them, shall, notwithstanding the said *Locke*, his heirs, ex-
 cutors, administrators, or assigns, shall not be privy or
 concur in, or shall soon express his or their disapprobation
 of the contracts, agreements, deeds, conveyances, and
 assurances, so to be entered into and executed by the said
 ———, or the survivor of them, or the heirs or assigns of
 such survivor, be to all intents, effects, constructions and
 purposes whatsoever, entitled to have, hold, and enjoy the
 said manor, advowson, barton, tenements, lands, heredita-
 ments, and premises, when they shall be so sold or con-
 veyed or assured to such purchaser or purchasers respec-
 tively, by the said ———, or the survivor of them, or
 the heirs or assigns of such survivor as aforesaid, against
 the said *Locke* and his heirs; and all and every persons and
 person, claiming by, from, through, under, or in trust
 for him, them, or any of them, freed, acquitted, and
 for ever discharged, of and from all right, title, interest,
 claim

claim and demand, whatsoever, of him the said Locke and his heirs. And also, that the receipt or receipts in writing of the said ———, or the survivor of them, or the heirs or assigns of such survivor, signed with their or his hands or hand, shall be a good and effectual discharge, and good and effectual discharges, to the purchaser and purchasers of the said manor, advowson, barton, messuages, lands, tenements, hereditaments, and premises, or any of them, for his, her or their purchase money; and that such purchaser or purchasers, paying his, her or their purchase money, or any part thereof, to the said ———, or the survivor of them, or the heirs or assigns of such survivor, and taking such receipt or receipts for the same respectively as aforesaid, shall not be answerable for the loss, misapplication or nonapplication, or be obliged or concerned to see to the application of the money, which in such receipt or receipts shall be mentioned and acknowledged to be received. *Provided always*, and it is hereby declared, that in the mean time and until the interlance of the said manor, advowson, barton, messuages, lands, tenements, hereditaments, and premises, shall be so sold and disposed of as aforesaid: the said ———, and the survivor of them, and the heirs and assigns of such survivor, shall from time to time, by, with and out of the rents, issues, and profits thereof, pay and discharge the interest now due, and hereafter to become due, for or in respect of the several principal sums of money so charged thereupon, by way of mortgage as aforesaid, or such of them or such part thereof respectively, as shall from time to time be due and owing on the securities as aforesaid, or any of them; and do and shall from time to time pay the surplus or residue of the said rents, issues and profits to the said Locke, his heirs, executors, administrators, or assigns, for his and their proper use and benefit; and it is hereby agreed and declared by and between the said parties to these presents, that the said ———, and the survivor of them, and the heirs, executors, administrators, and assigns

signs of such survivor, shall stand and be possessed of all and every sums and sum of money to arise by sale of the said manor, advowson, barton, messuages, lands, tenements, hereditaments, and premises, so intended to be sold as aforesaid, and every part thereof, *Upon the trusts*, and for the intents and purposes hereinafter mentioned; that is to say, *Upon trust* in the first place, with or out of the money arising by such sale as aforesaid, to pay, satisfy, and discharge all costs, charges, and expences whatsoever, to be attendant upon or occasioned by the trusts hereby created, or any of them. And in the next place, in or towards the payment, satisfaction, and discharge of the said several sums of £———, secured to the said *Newton* and *Milton* respectively, as hereinafter mentioned; or such of them, or such part thereof respectively, as shall from time to time remain due on the securities aforesaid, or either of them, and the interest due and to become due, for the same respectively; and from and after payment, satisfaction, and discharge of the said costs, charges, expences, sum and sums of money, and the interest thereof, and every part thereof respectively, do and shall pay, or cause to be paid, all the residue of the monies to arise by such sale or sales as aforesaid, unto the said *Lake*, his executors, administrators, or assigns, for his or their own use. *Provided always*, and it is hereby agreed and declared between and by the said parties to these presents, that if the said ———, his executors, administrators, or assigns, or any future trustee or trustees, to be appointed in the stead or place of him or them, or any of them, as hereinafter is mentioned, shall happen to die or be desirous of being discharged of and from, or refuse, or decline, or be incapable to act in the trusts hereby created as aforesaid, before the said trusts shall be fully executed, performed, or discharged; then and in such case, and when and so often as the same shall happen, it shall and may be lawful to and for the said *Newton*, his executors, administrators, or assigns, by any writing or writings under

der his or their hand and seal, or hands and seals, and to be attested by two or more credible witnesses, to nominate, substitute, or appoint any other person or persons to be a trustee or trustees, in the stead or place of the said ———, executors, administrators, or assigns, so dying or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid. And in like manner, if the said ———, his executors, administrators, or assigns, or any future trustee or trustees, to be appointed in the place or stead of him or them, or any of them, as hereinafter is mentioned, shall happen to die or be desirous of being discharged of or from, or neglect, or decline, or be incapable to act in the trusts hereby created as aforesaid, before the said trusts shall be fully executed, performed, or discharged; then and in such case and so often as the same shall happen, it shall and may be lawful to and for the said *Milton*, his executors, administrators, or assigns, by any writing or writings under his or their hand and seal, or hands and seals, and to be attested by two or more credible witnesses, to nominate, substitute, or appoint any other person or persons to be a trustee, in the stead or place of the ———, his executors, administrators, or assigns. And that when and so often as any new trustee or trustees shall be nominated and appointed as aforesaid, the said manor, advowson, barton, messuages, tenements, lands, hereditaments, and premises, shall be thereupon, with all convenient speed, conveyed and transferred in such sort and manner, and so as that the same shall and may be legally and effectually vested in the surviving or continuing trustee or trustees; and such new or other trustee or trustees; or if there shall be no continuing trustee or trustees, then in such new trustees only, upon the same trusts, intents, and purposes, as are hereinbefore declared of and concerning the same manor, advowson, barton, messuages, tenements, lands, hereditaments, and premises respectively. And that every such new trustee or trustees, shall and may in all things act and assist in the management, carrying on, and execution

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tion of the trusts to which they shall be so appointed, in conjunction with the other then surviving or continuing trustee or trustees, if there shall be any such continuing trustee or trustees, if not then by themselves, as fully and effectually, and with all the same power and powers, authority and authorities, of sale, disposition, direction, giving, or signing receipts, and effectual indemnifications and discharges to purchasers; and all other powers and authorities whatsoever, to all intents, effects, constructions, and purposes whatsoever, as if he or they had been originally, in and by these presents, nominated a trustee or trustees; and as the trustee or trustees in these presents named, his or their heirs, executors, or administrators, in or to whose place such new trustee or trustees, shall respectively come or succeed, are or is enabled to do, or could or might have done, under and by virtue of these presents, if living and continuing to act in the trusts hereby reposed in them or him, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. *Provided always*, and it is hereby declared, that the said several trustees, hereby nominated and appointed, and each and every of them, and the heirs, executors, administrators, and assigns of them, each of them, each and every of them shall be charged and chargeable respectively only for such monies as they shall respectively actually receive, by virtue of the trusts hereby in them reposed, notwithstanding his or their, or any of their giving or signing, or joining in giving or signing, any receipt or receipts for the sale of conformity. *And* any one of them or more of them, shall not be answerable or accountable for the other or others of them, or for the acts, receipts, neglects, or defaults of the other or others of them, but each and every of them, only for his and their own acts, receipts, neglects, or defaults respectively. *And* that they or any of them, shall not be answerable or accountable for any misfortune, loss, or damage, which may happen in the execution

execution of the aforesaid trust, or in relation thereto; except the same shall happen by or through their own wilful default respectively. *And also*, that it shall and may be lawful to and for them the said trustees in these presents named, and such future trustee or trustees to be appointed as aforesaid, and each and every of them, their and each and every of their heirs, executors, administrators, and assigns, by and out of the monies which shall come to their respective hands, by virtue of the trusts aforesaid, to retain to and reimburse himself and themselves respectively; and also to allow to his or their co-trustee or co-trustees, all costs, charges, damages, and expences which they, or any of them, shall or may suffer, sustain, expend, disburse, be at, or be put unto, in, or about the execution of the aforesaid trusts, or in relation thereunto. *And the said Locke* for himself, his heirs, executors, and administrators, *doth* covenant, promise, and agree with and to the said *Newton and Milton*, their heirs and assigns, by these presents, in manner following: that is to say, *That* for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said *Locke*, made, done, committed, executed, or knowingly or willingly suffered to the contrary, he the said *Locke*, at the time of the sealing and delivering of these presents, is lawfully, rightfully, and absolutely seized of, in, or well and sufficiently entitled unto the said manor, advowson, barton, messuages, tenements, lands, hereditaments, and premises, hereby granted and released, or expressed or intended so to be, and every part thereof, with the appurtenances thereto belonging for a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance in fee-simple, without any manner of condition, use, trust, power of revocation, equity of redemption, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same, save and except the said mortgages, debts of ———, and the interest thereof respectively; and the

uses or estates limited for securing the same respectively. *And that* for and notwithstanding any act, deed, matter, or thing as aforesaid, he the said *Locke*, now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said manor, advowson, barton, messuages, tenements, lands, hereditaments, and premises, hereby respectively granted and released, or expressed or intended so to be, with the appurtenances thereunto belonging, unto and to the use of the said ———, their heirs and assigns, subject and charged as hereinbefore is mentioned, and in manner aforesaid, according to the true intent and meaning of these presents. *And that* it shall and may be lawful to and for the said ———, their heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly, to have, hold, occupy, possess, and enjoy the said manor, advowson, barton, messuages, tenements, lands, hereditaments, and premises, hereby granted and released, or expressed and so intended to be, with the appurtenances thereunto belonging; and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by him the said *Locke*, or his heirs, or by any other person or persons lawfully claiming by, from, under, or in trust for him, them, or any of them, save and except the said *Newton* and *Milton*, and their respective heirs, executors, administrators, and assigns, in respect of their hereinbefore in part recited charges and incumbrances. *And that* free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise, by the said *Locke*, his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from and against all, and all manner of former and other gifts, grants, bargains, sales, jointures, dower, uses, trusts, entails, wills, statutes-merchant, or of the staple recognizances, judgments, ex-
tents,

rents, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's Majesty; and of, from and against all other estates, titles, troubles, charges, liens, burthens and incumbrances whatsoever, either already had, made, committed, executed or suffered, or hereafter to be had, made, committed, executed, done, or suffered by the said *Locke*, or his heirs, or any person or persons lawfully claiming, or to claim by, from, under, or in trust for him, them, or any of them, (save and except the said *Newton* and *Milton* and their respective heirs, executors, administrators, and assigns, in respect of their said hereinbefore mentioned charges and incumbrances.) And further, that he the said *Locke*, and his heirs, and all and every other person or persons having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, reversion, use, trust, property, claim, or demand whatsoever, either at law, or in equity, of, in, to, out of, or upon the said manors and other hereditaments hereby granted and released, or expressed and intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him the said *Locke*, or his heirs, save and except the said *Newton* and *Milton*, and their respective executors, administrators, and assigns, in respect of their said hereinbefore in part recited mortgages or incumbrances, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by the said —, or the survivor of them, or the heirs or assigns of such survivor, make, do, acknowledge, levy, suffer and execute, or cause and procure to be made, done, acknowledged, suffered and executed, all and every such further and other lawful and reasonable act and acts, deed and deeds, thing and things, devises, conveyances and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, assuring and confirming of the said manor, advowson, bar-

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ton, messuages, lands, hereditaments, and premises hereby granted, and released, or expressed and intended so to be, and every part thereof, with the appurtenances, unto and to the use of the said ——— their heirs and assigns, as by the said ——— or either of them, their, or either of their heirs or assigns, or their, or any of their counsel in the law, shall be reasonably devised, or advised and required. *In witness, &c.*

The following *Appointment of Receiver* accompanied the foregoing Mortgage.

THIS INDENTURE, made the day of 179 . Between *Locke*, of, &c. Esq. of the first part, *Newton*, of, &c. Esq. and *Milton*, of, &c. Esq. of the second part, and ——— of, &c. Esq. of the third part, *Whereas* by Indentures of lease and release, the lease bearing date the day next before the day of the release, and the release bearing even date with these presents, and made, or expressed to be made between ——— the younger, of, &c. of the first part, the said *Locke*, of the second part, the said *Newton* of the third part, and the said *Milton* of the fourth part, in consideration of the sum of £. ——— by the said *Newton*, and of the like sum of £. ——— by the said *Milton*, to or upon the account of the said *Locke* paid, as in the indenture of release now in recital is expressed, *All*, &c. have been conveyed unto the said *Newton* and *Milton*, and their heirs, to the uses hereinafter mentioned, that is to say, as to one undivided moiety or one equal half part or share (the whole into two equal half parts or shares being divided) of and in the said manor, barton, and other hereditaments, *To the use* of the said *Newton*, his executors, administrators, and assigns, for and during the term of 500 years, without impeachment of waste,

waste, subject to the proviso or consideration, covenant and agreement in the said indenture of release contained, and hereinafter mentioned, for determining and making void the said term of 500 years; and after the expiration or sooner determination of the said term of 500 years, and in the mean time subject thereto, *To the use of the said Milton*, his heirs and assigns, but subject to the proviso or condition, covenant and agreement therein contained and hereinafter mentioned, for determining and making void the use or estate so thereby limited to the said *Milton*, his heirs and assigns, as to the other undivided moiety or other equal half part or share (the whole into two equal half parts or shares being divided) of and in the said manor, barton, and other hereditaments, *To the use of the said Milton*, his executors, administrators, and assigns, for and during the term of 500 years; but subject to the proviso or condition, covenant and agreement in the said indenture contained, and hereinafter mentioned, for determining or making void the last mentioned term of 500 years, and immediately from and after the expiration or sooner determination of the said last mentioned term of 500 years, and in the mean time subject thereto, *To the use of the said Newton*, his heirs and assigns, but subject to the proviso or condition, covenant and agreement, in the same indenture contained, and hereinafter mentioned, for determining the use or estate so thereby limited to the said *Newton*, his heirs and assigns; and in the said indenture of release is contained a proviso or condition, covenant and agreement, whereby it is provided, agreed, and declared, that if the said *Locke*, his heirs, executors, administrators, or assigns, should well and truly pay, or cause to be paid to the said *Newton*, his executors, administrators, or assigns, the sum of £. — with interest for the same, after the rate, at the days and times, and in manner as in the said indenture of release is mentioned for payment thereof respectively, then and in such case, as well the use or estate thereby limited to

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the said *Newton*, his executors, administrators, and assigns, for the term of 500 years, in the first therein and hereinbefore mentioned moiety or equal half part or share of the said manor, barton, and other hereditaments, as the use or estate thereby limited to the said *Newton*, his heirs and assigns, in the secondly therein and hereinbefore mentioned moiety or equal half part or share of and in the said manor, barton, and other hereditaments, shall cease, determine, and be absolutely void. And in the said indenture of release is also contained a proviso or covenant, declaration or agreement, whereby it is provided, agreed, and declared, that if the said *Locke*, his heirs, executors, administrators, or assigns, should well and truly pay, or cause to be paid unto the said *Milton*, his executors, administrators, and assigns, the sum of £. ———, with interest for the same, after the rate, and at the days and times, and in manner as in the said indenture now in recital is mentioned for payment thereof respectively, then and in such case, as well the use or estate thereby limited to the said *Milton*, his executors, administrators, or assigns, for the term of 500 years, in the secondly therein and hereinbefore mentioned moiety or equal half part or share of the said manor, barton, and other hereditaments, as the use or estate thereby limited to the said *Milton*, his heirs and assigns, in the first therein and hereinbefore mentioned moiety of the said manor, barton, and other hereditaments, shall cease, determine, and be absolutely void. And whereas the said *Locke* did, previous to the executing the aforesaid indentures, agree with the said *Newton* and *Milton*, that for the punctual and regular payment of the interest of the said sums of £. ———, a receiver should, with the approbation of the said *Newton* and *Milton*, or their respective executors, administrators, or assigns, be from time to time constituted and appointed for collecting and receiving the rents and profits of the said manor, barton, and other hereditaments, in the said indenture of release, bearing even date herewith mentioned and comprized.

prized. *Now therefore this indenture witnesseth*, that in pursuance of the said agreement, he the said *Locke*, with the approbation of the said *Newton* and *Milton*, testified by their severally being parties and sealing these presents, *Have* made, ordained, constituted, and appointed, *And* by these presents *Doth* make, ordain, constitute, and appoint the aforesaid _____ receiver, agent, and attorney, from time to time, in the name of him the said *Locke*, to ask, demand, collect, and receive all and every the rents and profits of the said manor, barton, and other hereditaments, comprized in the said hereinbefore in part recited indentures of lease and release, with their appurtenances, of and from the present and future tenants and occupiers thereof respectively, as and when the same shall from time to time become due and payable; and in case of the nonpayment thereof, or of any part thereof, to take and use such lawful remedies for recovering and obtaining payment of the said rents and profits, or any part thereof, by action, suit, distress, or otherwise, as shall be thought necessary. *And further*, to do, perform; and execute all matters and things needful and requisite for collecting and receiving of the said rents and profits; as fully and effectually to all intents and purposes whatsoever, as he the said *Locke* could or might himself do: and the said *Locke* doth hereby order and direct all and every the tenants and occupiers of the said manor, barton, and other hereditaments, to pay unto the said _____ all and every the rents and profits thereof, for the purposes hereinafter mentioned, and *Doth* hereby declare that the receipts of the said _____ shall be good and sufficient discharge to such tenants and occupiers for such rents and profits as they shall respectively pay to him. And it is hereby agreed by and between the parties to these presents, that all and every the rents and profits which shall be so received by the said _____ as aforesaid, shall be applied upon and for the trusts, intents, and purposes hereinafter mentioned, that is to say, upon trust that

that he the said ——— shall and do, from time to time, out of the rents of the said manor, barton, and other hereditaments, which he shall receive by virtue of these presents, in the first place pay all taxes, rates, assessments, and impositions whatsoever, taxed, rated, assessed, or imposed on the said manors and other hereditaments, or any of them, or on the owners or occupiers of the same hereditaments, for or in respect thereof, or any part or parts thereof, and in the next place pay, or cause to be paid to the said *Newton* and *Milton* respectively, and their respective executors, administrators, and assigns, all the interest which shall from time to time become due or payable, for or in respect of the said sums of £. ——— and £. ——— on or at the days and times, and in the manner in the said indenture of release mentioned. And lastly, shall and do pay, or cause to be paid to the said *Locke*, his heirs, executors, or administrators, or to such persons as he or they shall order or direct, all the clear residue and surplus of the rents and profits of the said manor, barton, and other hereditaments, which shall from time to time remain, after answering the purposes aforesaid, and deducting and retaining out of such residue or surplus of the said rents and profits for his own use, so much and such sums of money as he shall reasonably deserve, as a compensation and satisfaction for his care, pains, trouble, and expences in receiving and paying the said rents and profits, in manner and for the purposes aforesaid. And the said ——— doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said *Newton* and *Milton*, and each of them, their and each of their executors and administrators, and also to and with the said *Locke*, his executors, administrators, and assigns, in manner following, that is to say, that he the said ——— shall and will from time to time, so long as he shall be the collector and receiver of the rents and profits of the said manor, barton, and other hereditaments, or any of them,

them, in manner aforesaid, use his utmost endeavours faithfully to collect and receive the same, and that he the said ~~Locke~~ shall and will, during such time and so long as he shall continue and be the collector and receiver of the rents and profits of the said manor, barton, and other hereditaments as aforesaid, truly and punctually pay, or cause to be paid in manner, and to and for the ends, intents, and purposes aforesaid, all such sum and sums of money, as shall from time to time be collected or secured by him the said ~~Locke~~ by virtue of or under the aforesaid power or authority. And the said *Locke* doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said *Newton* and *Milton*, their executors and administrators, in manner following, that is to say, that he the said *Locke* shall not nor will, without the consent of the said *Newton* and *Milton*, their executors and administrators, first had and obtained in writing, signed with their hands, revoke the powers or authorities hereby given to the said ~~Locke~~ or any of them, or do or suffer to be done any act, matter, or thing, whereby the said powers or authorities hereby given, or any of them, may and shall become void and of no effect, nor hinder or obstruct him the said ~~Locke~~ or any future receiver to be appointed as hereinafter is mentioned, for recovering, collecting, or receiving all or any of the rents and profits of the said manor, barton, and other hereditaments, upon and for the trusts and purposes aforesaid, during such time as the said sums of £. ~~100~~ and £. ~~50~~ or either of them, or any part thereof respectively, shall remain and continue on the security heretofore mentioned. And further, that in case the said ~~Locke~~ shall by death or other disability be disqualified or rendered incapable to collect and receive the rents and profits of the said manor, barton, and other hereditaments, or shall refuse or neglect to proceed therein in manner aforesaid, or shall otherwise misbehave himself in the trusts hereby in him reposed, whilst the

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said sums of £. ——— and £. ——— or either of them, or any part thereof respectively, shall remain and continue on the aforesaid security, then and in any of the said cases he the said *Locke*, his heirs, executors, administrators, and assigns, shall and will join with the said *Newton* and *Milton*, and their respective executors, administrators, or assigns, in discharging the said ——— if then living, from the same employment; and shall and will in any of the cases aforesaid, duly constitute, appoint, and authorize such other fit person or persons in the place or stead of the said ——— as they the said *Newton* and *Milton* respectively, and their respective executors and administrators, shall from time to time nominate, direct, or appoint, to collect, receive, and pay the rents and profits of the said manor and other hereditaments, upon and for the trusts, intents, and purposes hereinbefore mentioned, and so from time to time when and so often as the like case shall happen, until the said sums of £. ——— and £. ——— and all interest for and in respect of the same respectively, shall be paid to the said *Milton* and *Newton* respectively, and their respective executors, administrators, and assigns. And if the said *Locke*, his heirs or assigns, or any of them, shall refuse or neglect so to do, for the space of three calendar months next after the death, incapacity, or misbehaviour of the said ——— or any other receiver, so to be constituted and appointed as aforesaid, that then and in such case, and so from time to time as often as the like case shall happen, it shall and may be lawful to and for the said *Milton* and *Newton* respectively, their respective executors or administrators, if they respectively shall think fit, without the consent or concurrence of the said *Locke*, his heirs or assigns, to constitute or appoint some fit person to collect, receive, and pay the said rents and profits, upon the trusts and for the purposes aforesaid, with such reasonable salary for his care, pains, trouble, and expence, as the said *Newton* and *Milton* respectively, and their respective executors,

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tors or administrators shall think fit, not exceeding one shilling in the pound upon the gross rental for the time being. *Provided always*, and it is hereby agreed and declared, between and by the parties to these presents, that the said *Newton* and *Milton*, or either of them, their, or either of their heirs, executors, or administrators, shall not in any case be chargeable with or answerable for any loss, misapplication, or nonapplication of the rents and profits of the said manor, barton, and other hereditaments, or any part thereof, by reason of any defect, default, or breach of trust in the said ——— or any future collector or receiver so to be appointed as aforesaid, but that such loss, misapplication, or nonapplication, and every receiver's salary shall be wholly borne and paid by the said *Locke*, his heirs, executors, or administrators. *Provided also*, and it is hereby agreed and declared, between and by the parties to these presents, that the said ——— or such other receiver or receivers so to be appointed as aforesaid, shall not act under or exercise the powers or authorities hereinbefore contained, or any of them, until some one half yearly payment of the interest to become due, for or in respect of the said sums of £. ——— and £. ——— or one of them, or some part thereof respectively, shall be in arrear or unpaid, by the space of three calendar months next after the same ought to be paid, by virtue of the said indenture of release, bearing even date with these presents, any thing hereinbefore contained to the contrary thereof, or in anywise notwithstanding. *In witness, &c.*

An Introduction to the Uses of a Recovery, by way of Mortgage, with a variety of other matter.

THIS INDENTURE made, &c. *Between Locke*, of ——— in the county of ——— Esq. and *Emma*, his wife, formerly *Emma Long*, spinster, of the first part, *Locke* the younger, eldest

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eldest son of the said *Locke*, by the said *Emma* his wife, of the second part, *Wyll*, of, &c. Esq. of the third part, *North*, of, &c. Esq. of the fourth part, *South*, of, &c. clerk, who survived *Long* the younger, of, &c. Esq. of the fifth part, *Newton*, of, &c. Esq. of the 6th part, and *Milton*, of, &c. Esq. of the seventh part. Whereas by indentures of lease and release, bearing date respectively the 30th and 31st days of January 1767, the release being apartite, and made or expressed to be made between the said *Locke*, of the first part, *Long*, Esq. and the said *Emma*, by her then name and addition of *Emma Long*, spinster, daughter of the said *Long*, of the second part, *Horne*, Esq. and *Watts*, Esq. of the third part, and the said *South* and *Long* the younger, deceased, of the fourth part, being the settlement made previous to and in consideration of the marriage then intended and afterwards solemnized between the said *Locke* and *Emma Long*, his present wife, *It was witnessed*, that in consideration of the said intended marriage and £. 4000 by the said *Long* paid to the said *Locke*, as the marriage portion of the said *Emma Long*, and for making a competent provision, as well for the said *Emma Long*, for her jointure, as for other the considerations therein mentioned, the said *Long* did grant, bargain, sell, release, and confirm unto the said *Horne* and *Watts*, and their heirs and assigns, amongst and together with divers other manors, messuages, lands, tenements, and hereditaments, hereinafter granted, and released, or expressed or intended so to be, with their appurtenances, *To hold* the same, unto the said *Horne* and *Watts*, their heirs and assigns, to the use of the said *Long*, and his heirs, until the said then intended marriage should be solemnized, and after the solemnization thereof, to the use of the said *Long*, and his assigns, for his life, without impeachment of waste, with remainder to the use of the said *Horne* and *Watts*, and their heirs, during the life of the said *Long*, to preserve the contingent uses and remainders thereafter limited, from be-

ing defeated; and after his decease, to the use, intent, and purpose that the said *Emma Long*, now the wife of the said *Locke*, and her assigns, should receive and take out of the said thereby granted and released manors, messuages, lands, and hereditaments, for her natural life, an annuity or yearly sum of £. 700 of lawful money of Great Britain, free and clear of all taxes and deductions whatsoever, for her jointure, and in bar of dower, to be paid at the times and in manner therein mentioned, with the usual powers of entry and distress, and perception of the rents and profits of the said hereditaments, in case of the nonpayment of the said annuity, And as for and concerning all the said manors, messuages, lands, tenements, hereditaments, and premises therein mentioned, from and after the decease of the said *Locke*, for her life as aforesaid, and subject to and charged and chargeable with the said annuity of £. 700 to the said *Emma*, for her life as aforesaid, and to the remedies and means for the recovery thereof, to the use of the said *South* and *Long* the younger, their executors, administrators, and assigns, for the term of 500 years, to commence from the time of the decease of the said *Long*, without impeachment of waste, upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same; and at the expiration or other sooner determination of the said term of 500 years, to the use of such child or children of the said *Locke*, on the body of the said *Emma* to be begotten; and for such estate and estates, and in such proportions, manner, and form as the said *Locke*, by any deed, or by his last will and testament in writing, to be by him sealed and delivered, or published, in the presence of three or more credible witnesses, should direct, limit, or appoint; and for want of such direction, limitation, or appointment, and in the mean time until such direction, limitation, or appointment should be made, or in case any such should be made, when and so soon as the estate or estates thereby to be limited, should respectively end or determine,

mine, to the use of the first son of the body of the said *Locke*, on the body of the said *Emma* to be begotten, and to the heirs male of the body of such first son, lawfully issuing; and in default of such issue, to the use of the second, third, fourth, and all and every other the son and sons of the said *Locke*, on the said *Emma* to be begotten, successively in tail male; and in default of such issue, to the use of the said *South* and *Long* the younger, their executors, administrators, and assigns, for the term of 600 years, without impeachment of waste, upon the trusts therein after expressed (and by the birth of issue male of the said marriage, now become discharged, or not capable of taking effect); and after the expiration or sooner determination of the said term, to the use of the said *Locke*, his heirs and assigns for ever. And it was by the indenture now in recital declared, that the said term of 500 years, yearly limited to the said *South* and *Long* the younger, their executors, administrators, and assigns, was so limited to them, their executors, administrators, and assigns, upon trust, in the first place, for the better securing, by the ways and means therein mentioned, the payment of the said annuity of £. 700, clear of all taxes and deductions, to the said *Emma Long*, and her assigns, for her life, after the death of the said *Locke*, as aforesaid, and subject thereto, upon trust, in the next place, that in case there should be one or more child or children of the said intended marriage, (besides an eldest or only son) then the said *South* and *Long* the younger, or the survivor of them, or the executor or administrator of such survivor, should, by and out of the rents, issues, and profits of the said manors, or reputed manors, messuages, lands, tenements, and hereditaments, or by sale or mortgage thereof, or of any part thereof, for all or any part of the said term of 500 years, without prejudice, nevertheless, to the said annuity of £. 700, or the means or remedies for raising thereof, raise and levy for the portion and portions of such child or children before mentioned (the child or
children

children to whom the said *Locke* should limit or appoint any estate or estates in the said manor, messuages, lands, tenements, and premises; or an eldest son, in case no such limitation or appointment should be made, excepted) the several sums of money thereafter mentioned; (that is to say,) if there be but one such child, the sum of £4000 for such child; and if there be two or more such children, then the sum of £6000 for the portions of such children, to be equally divided between them, share and share alike; and the portion or portions of such child or children to be paid to them respectively: if a son or sons, when they should respectively attain the age of 21 years: if a daughter or daughters, when they should respectively attain that age, or be married; and such benefit of survivorship, in case of the death of any of the said children, before their respective portions should become payable is given, and such provisions for vesting their shares respectively, in case the said term of 500 years should not have commenced at the time the said portions are mentioned to be payable as aforesaid, is thereby made, as is therein mentioned; and the said *South* and *Long* the younger, are yearly empowered by and out of the rents, issues, and profits of the said hereditaments and premises, in the mean time, until the said portions should become respectively payable, to raise and pay for the maintenance and education of the said children, such yearly sum and sums of money as they should think fit, not exceeding the yearly interest of their respective portions, after the rate of 4 per cent. per annum, to be paid quarterly as therein mentioned. And it was thereby provided, that if the said *Locke* should, by his last will or other writing, under his hand and seal, executed in the presence of three or more credible witnesses, otherwise provide for the maintenance of such child or children, then the trust hereinbefore declared in respect thereto, should cease and determine. And it was thereby also provided, that in case

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the said *Locke* should in his life time give or appoint to any the child or children aforesaid, any sum or sums of money for or towards his, her or their advancement in marriage; buying any place, or setting up him, her or them, in any profession or employment; then such sum and sums of money should be accounted and deemed to go in discharge and satisfaction of the said portion or portions, or such part thereof, as the sum or sums so given, should amount to, unless the said *Locke* should, by writing, direct and declare the contrary. *And whereas* the marriage between the said *Locke* and *Emma Long*, was, soon after the said indenture, duly had and solemnized: *And there is* issue of the said marriage, the said *Locke* the younger, party hereto, and two younger children, namely, ———, and there are not nor have been any other child or children of the said marriage, *And whereas* the said *Locke*, the elder, hath not at any time heretofore exercised or executed the power, by the said in part recited settlement reserved to him, of appointing the said manors and hereditaments, hereby granted and released to his said children, as before mentioned, either as to the whole or any part or parts of the same manors and hereditaments, or any of them, in favor of his said children, or any of them, in any manner whatsoever, *And whereas* the said *Long*, the younger, is dead, whereby the said term of 500 years is become vested in the said *South* alone, *And whereas* the said *Locke*, the elder, having occasion to borrow the sum of £4000, hath applied to the said *Newton*, to lend him the same, which he hath agreed to do; on having the repayment thereof, interest secured to him on the said manors and hereditaments hereinafter expressed to be hereby granted and released, with their appurtenances, being a part of the said hereditaments comprised in the said settlement; in the manner and after the rate hereinafter mentioned: the said *Locke*, therefore, in order effectually to secure to the said *Newton* the repayment of the said sum, and the interest thereof, hath requested the

the said *Emma Locke*, his wife, and *Locke* the younger, to join with him, in suffering a recovery of the said manor and hereditaments, with their appurtenances, that thereby the estate tail, which, by the aforesaid settlement, is now vested in remainder in the said *Locke* the younger, as the eldest son of the said marriage, and all remainders and reversions whatsoever, expectant or dependant thereon, as well also as the said annuity or yearly sum of £700, as provided for the said *Emma Locke* for her life, as hereinbefore mentioned: (so far only as the same is issuing out of, and charged and chargeable, when the same manor and hereditaments may be barred, destroyed, and extinguished). And he hath also requested the said *Locke* the younger, to join with him in entering into a bond, in the penalty of £2000, for the better and further securing the repayment of such sum of £4000, and the interest thereof after the rate hereinafter mentioned: And in as much as the trusts of the said term of 500 years, so limited to the said *South* and *Long*, precedes the limitation of the said estate tail, so vested in the said *Locke* the younger, as aforesaid, and may have priority to the security intended or agreed to be made to the said *Newton*; the said *Locke* hath therefore, with the consent of the said *Emma*, his wife, requested the said *South* to make such assignment of the said term, for the further security of the said *Newton*, as is hereinafter mentioned; and the said *Locke* the elder, having proposed that the same manors and hereditaments, with their appurtenances, should (subject to the said sum of £4000, and the interest thereof; and the terms hereby granted for securing the same, be limited to the severall uses; and that the said term of 500 years, so vested in the said *South*, should be assigned upon and for the trusts, intents and purposes, and subject to the provisos and agreements hereinafter expressed and declared, concerning the same, the said *Emma Locke* and *Locke* the younger, have agreed to comply with such request of the said *Locke* the elder; and also to join in a covenant with him for
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levying a fine, *sur cognizance de droit come ceo*, &c. to enure to the same uses, intents, and purposes as shall be declared of the said recovery. And whereas the said South being satisfied that the said several manors or lordships, or reputed manors or lordships, messuages, lands, tenements and hereditaments in the said indenture of settlement particularly mentioned and described, and not herein or hereby granted and released, are sufficient for the raising and payment of the portions provided for the younger children of the said Locke the elder, by the said Emma, his wife, hath agreed to make such assignment as is hereinafter mentioned of the same manor, tenements and hereditaments, comprised in the said term of 500 years, upon his being indemnified by the said Locke the elder, and Locke the younger, in manner hereinafter expressed. Now this indenture witnesseth, that in pursuance and performance of the said several agreements, and for and in consideration of the sum of £4000, of lawful money of Great Britain, to the said Locke the elder, (with the approbation of the said Emma, his wife, and Locke the younger, testified by their severally being parties to and sealing and delivering these presents) in hand well and truly paid by the said Newton, at or immediately before the sealing and delivery of these presents, the receipt whereof He the said Locke, doth hereby acknowledge, and thereof and therefrom, and of and from the same, and every part thereof, doth acquit, release and discharge the said Newton, his heirs, executors and administrators for ever, by these presents; and also for and in consideration of the sum of 10s. of like lawful money, to each of them, the said Locke the elder, Emma Locke, his wife, and Locke the younger, in hand at the same time well and truly paid by the said Newton, the receipt whereof is hereby acknowledged: and for the purpose as well of the destroying the power by the aforesaid in part recited indentures and settlement, given to the said Locke the elder, of appointing or limiting the said manor, messuages, lands, tenements and hereditaments, hereinafter

hereinafter expressed to be granted and released to the children of the said *Locke* the elder, by the said *Emma*, his wife, as therein and hereinbefore mentioned, so far only as the said power relates to or concerns the same manor and hereditaments, with their appurtenances, as of barring and destroying the estate tail, now vested in the said *Locke* the younger, as aforesaid, of and in the same manor, messuages, farms, lands, tenements and hereditaments, and the remainders and reversions thereupon expectant or depending, and extinguishing the said rent charge, or yearly sum of £700, in and by the said indenture of settlement provided for the said *Emma Locke*, for her life, as aforesaid; and all the remedies and powers thereby given and provided for securing and enforcing the payment and recovery thereof; but so far only as the same rent charge, or annual sum is charged upon the manor and hereditaments hereinafter expressed to be hereby granted and released; and for conveying, settling, limiting and assuring the same manor, messuages, lands, tenements and hereditaments hereinafter mentioned, and intended to be hereby released, *To the uses*, upon the trusts, and for the intents and purposes, and under and subject to the provisos, declarations and agreements, hereinafter limited, expressed and declared of and concerning the same. *They* the said *Locke* the elder, *Emma Locke*, and *Locke* the younger, at the request and by the direction and appointment of the said *Newton*, (testified by his being a party to and sealing and delivering these presents) *have*, and each and every of them *hath* granted, bargained, sold, released and confirmed; and by these presents *do*, and each and every of them *doth*, according to their respective rights and interests therein, grant, bargain, sell, release and confirm unto the said *North*, (in his actual possession now being, by virtue of a bargain and sale to him thereof made by the said *Locke* the elder, *Emma Locke*, and *Locke* the younger, in consideration of 5*s*. by indenture bearing date the day before the day of the date of these presents for one whole year, commencing from the

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day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession :) And to his heirs, *all* that manor, &c. *To have and to hold* the said manor or lordship, manor-farm, messuages, farms, lands, tenements, and all and singular other the hereditaments, hereby granted, bargained, sold, released and confirmed, or mentioned, or intended so to be, with their and every of their rights, members and appurtenances, unto the said *North*, his heirs and assigns, *To* the use and behoof of the said *North*, his heirs and assigns, *To* the end and intent, that by virtue of these presents, the said *North* may become and be a good and perfect tenant of the freehold of the said manor or lordship, manor-farm, messuages, lands, tenements and hereditaments, with their appurtenances, *In order that* one or more good and effectual common recovery, or common recoveries, may be suffered and executed of the said manor or lordship, manor-farm, messuages, lands, tenements and hereditaments, with their appurtenances. *And* it is hereby agreed and declared by and between the said parties hereto, that it shall be lawful for the said *West* forthwith, at the costs and charges of the said *Locke* the elder, to sue forth out of his Majesty's High Court of Chancery, one or more writ or writs of entry, "*sur disseizin en le post*," returnable before his Majesty's Justices of the said Court of Common Pleas, at Westminster; and by the said writ to demand against the said *North*, *All* the said manor or lordship, manor-farm, messuages, lands, tenements and hereditaments, hereinbefore expressed to be hereby granted and released, or intended so to be, with their appurtenances, by such names, quantities, qualities and description, and number of acres as shall be sufficient to ascertain and comprise the same, with the appurtenances, to which said writ or writs the said *North* shall appear gratis, either in his own proper person, or by his attorney thereto lawfully authorized, and vouch to warranty the said *Locke* the elder, and *Emma* his wife, and the said *Locke* the younger, who, in their proper persons, or by their attorney or attorneys,

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lawfully authorized in that behalf, shall also appear gratis and enter into the said warranty, and vouch over to warranty the common vouchee of the Court of Common Pleas, who shall likewise appear gratis and plead; and after imparlance make default, by departing in contempt of the same Court, so that judgment may be thereupon awarded and given to the said *West*, to recover the same manor, messuages, lands, tenements and hereditaments, with their appurtenances, against the said *North*, and for him the said *North* to recover in value, against the said *Locke* the elder, and *Emma*, his wife, and *Locke* the younger, and for them the said *Locke* the elder, and *Emma*, his wife, and *Locke* the younger, to recover in value, against the said common vouchee; and that execution may and shall thereupon be had and taken, and all and every other act and thing done, perfected, needful and requisite for the suffering and executing one or more good and effectual common recovery or common recoveries of the said manor, manor-farm, messuages, lands, and hereditaments hereby bargained, sold, released and confirmed, or mentioned or intended so to be, with their appurtenances, with such vouchers as aforesaid, according to the course, order and manner of common recoveries for assurance of lands and tenements, in like cases usual. And it is hereby also expressly declared and agreed by and between the said parties hereto, that the said common recovery so as aforesaid, or in any other manner to be suffered and executed of the said manor or lordship, manor-farms, lands, tenements and hereditaments, hereby granted, bargained, sold, released and conveyed, or mentioned or intended so to be, and any of them: And all and every other common recovery and common recoveries in the law whatsoever heretofore had, made, levied, suffered and executed, or hereafter to be had, made, levied, suffered and executed of the same manor or lordship, manor-farm, messuages, farms, lands, tenements and hereditaments, or any of them, jointly or together with any other manor and hereditaments, shall

be, and enure, and be construed, deemed, and taken to be and enure to the several uses, upon the trusts, and to and for the intents and purposes, and under and subject to the provisoes, declarations and agreements, heinafter limited or expressed of or concerning the same: that is to say, in the first place, To the intent and purpose that the power in and by the said in part recited indenture and settlement given to the said *Locke* the elder, of appointing the several manors, lordships, and hereditaments therein comprized, to the child or children of the same *Locke*, on the body of the said *Emma* his wife begotten, or to be begotten, may be so far only as the same power extends or relates to, concerns, or includes the manor or lordship, manor farm, messuages, farms, lands, tenements, and hereditaments hereinbefore expressed to be hereby granted and released, with their appurtenances, or any part or parts thereof, from henceforth absolutely destroyed; and also that the said annuity or other yearly sum of £.700, so by the same indenture or settlement, created and made payable to the said *Emma Locke*, after the decease of the said *Locke* the elder, for her life, for her jointure as aforesaid, (but so far only as the said annuity or yearly sum is issuing out of, and charged or chargeable on the said manors or lordships, manor farm, messuages and farms, lands, tenements, and hereditaments hereinbefore expressed to be hereby granted and released as aforesaid, with their appurtenances, or intended so to be) and the powers and remedies thereby given for the compelling payment thereof, may be for ever from henceforth extinguished, and also the estate tail by the same indenture or settlement now vested in the said *Locke*, the younger, as aforesaid, of and in the same manor or lordship, manor farm, messuages, farms, lands, tenements, and hereditaments only, and any remainders and reversions thereon expectant or depending, may be for ever barred and destroyed; and the same manor or lordship, manor farm, messuages, farms, lands, tenements, and hereditaments hereinbefore expressed to

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be hereby granted and released, or intended so to be, with their appurtenances, and every of them, and every part and parcel thereof, may from henceforth be, remain, and stand limited, to the several uses, upon and for the several trusts, ends, intents, and purposes, and subject to such powers, provisoes, conditions, declarations, and agreements as are herein particularly, or by reference expressed and declared of and concerning the same, that is to say, *To* the use and behoof of the said *Newton*, his executors, administrators, and assigns, from henceforth, for and during the full end and term of 1000 years now next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, for the purpose of securing to him, his executors, administrators, and assigns, the repayment of the aforesaid sum of £.4000, so by him advanced to the said *Locke* the elder, as aforesaid, and the interest thereof, after the rate, and at the times hereinafter mentioned, but subject to the proviso or agreement for making void the same term hereinafter contained, and from and immediately after the expiration or other sooner determination of the said term of 1000 years, and in the mean time subject thereto, *To* the use, intent, and purpose that the said annuity or yearly sum of £.700, so by the aforesaid settlement provided to be paid to her the said *Emma Locke*, and her assigns, from and after the decease of the said *Locke* the elder, for her life, in case she shall happen to survive her said husband, may be more amply secured, and therefore that she and her assigns shall and may yearly and every year, during the term of her natural life, by the ways and means in the said settlement, have, receive, take, and recover out of the rents and profits of the said manor or lordship, manor farm, messuages, farms, lands, tenements, and hereditaments hereinbefore expressed to be hereby granted and released, or intended so to be, with their appurtenances, as well as out of all other the manors, lordships, messuages, farms, lands, tenements, and hereditaments

ments comprized in the aforesaid indenture or settlement, and not comprized in these presents; the said annuity or yearly sum of £.700, so given to and provided for her, for her life as aforesaid, at the same times and in the same manner, to all intents and purposes whatsoever, as are mentioned and expressed in and by the said indenture or settlement, concerning the said annuity or yearly sum of £.700 thereby created, and not otherwise; and subject thereto (and without prejudice to the said term of 1000 years, so limited to the said *Newton*, his executors, administrators, and assigns as aforesaid) *Then* for the purpose of confirming the said term of 500 years, so by the said indenture or settlement created as aforesaid, upon and for the same trusts, ends, intents, and purposes, and under and subject to the same powers, provisos, declarations, and agreements, as are therein expressed and declared concerning the same; and from and after the end, expiration, or other sooner determination of the same term of 500 years, and in the mean time subject thereto, *To the use of* such person or persons, for such estate or estates, upon such trusts, and for such intents and purposes, and with and under and subject to such powers, provisos, declarations, and agreements, and charged and chargeable with such annual or other sum and sums of money, and in such manner and form, either conditionally or absolutely, as the said *Locke* the elder, and *Locke* the younger, during their joint lives, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by them executed in the presence of and attested by two or more credible witnesses, shall from time to time jointly direct, limit, or appoint; and in default of such direction, limitation, or appointment, and in the mean time, until such direction, limitation, or appointment shall be made and take effect, and in case any such shall be made, then, when, and as the estates and interest thereby directed, limited, and appointed,

ed, shall respectively end and determine; and as to such, and so much, and such part and parts of the said manor, messuages, lands, tenements, and hereditaments, whereof no such direction, limitation, or appointment shall be made, to the use of the said *Locke* the elder, and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste, and after his decease to the use of the said *Locke* the younger, his heirs and assigns for ever, and to and for no other use, intent, or purpose whatsoever [*here insert the usual proviso of cesser and common covenant*] And further, that they the said *Locke* the elder, and *Locke* the younger, shall and will procure the said — and — (*the two younger children*) when and as they shall respectively attain the age of 21 years; and in case of their or either of their deaths, after they shall respectively attain that age, then their executors or administrators respectively, or the survivor of them, and the executor or administrator of the one of them who shall so die, in case the said sum of £.4000, and the interest thereof, or of any part thereof respectively, shall then remain secured on the manor, lordship, and hereditaments hereinbefore expressed to be hereby granted and released, or on part thereof, to make, do, and execute at the request of the said *Newton*, his executors, administrators, and assigns, but at the costs and charges of the said *Locke* the elder, and *Locke* the younger, their heirs, executors, or administrators, all such acts and deeds whatsoever, as shall be necessary for effectually releasing the said manor or lordship, manor farm, and other the hereditaments herereinbefore expressed to be hereby granted or released (but so far only as the portions provided by the aforesaid indenture or settlement for them, as the younger children of the said *Locke* the elder, and *Emma* his wife, may have priority to the security hereby made to the said *Newton*, his executors, administrators, or assigns, and during such time only as the said £.4000, and

and the interest, or any part thereof, shall remain secured thereon, and not otherwise) from the payment of all and every such portion and portions, or sum and sums of money which they the said — and — (*the two younger children*) respectively are, or either of them is or may be intitled to receive or claim out of the several manors or lordships, and hereditaments comprized in the said term of 500 years, created by the said indenture or settlement, under and by virtue of the trusts thereby created and declared, and of and from every part thereof. *And* for the better and more effectually securing to the said *Newton* the repayment of the said sum of £.4000, and the interest thereof, in the manner hereinbefore expressed, and according to the true intent and meaning of these presents, and for settling and assuring the said manor or lordship, manor farm, messuages, lands, tenements, and hereditaments hereinbefore expressed to be hereby granted and released, or intended so to be, with the appurtenances, to the uses, upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore particularly, or by reference expressed and declared, *It is* hereby agreed by and between the said parties hereto, and the said *Locke* the elder, doth for himself, his heirs, executors, and administrators, and for the said *Emma* his wife; and the said *Locke* the younger, doth for himself, his heirs, executors, and administrators, further covenant, promise, and agree with and to the said *Newton*, his executors, administrators, and assigns, by these presents, in manner following, that is to say, that they the said *Locke* the elder, and *Emma Locke*, and *Locke* the younger, as soon as the common recovery hereinbefore agreed and intended to be suffered, shall be had and suffered, shall and will, at the costs and charges of the said *Locke* the elder, in or as of this present Hilary Term, or in some other subsequent term, acknowledge and levy before his Majesty's justices of the Court of Common Pleas, at Westminster, one or more fine or fines, *sur conissance de droit*

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come ceo, &c. whereupon proclamations shall and may be had and made, according to the form of the statute in that case made and provided, and the usual course of fines in such cases accustomed, unto the said *North*, and his heirs, of the said manor or lordship, manor farms, messuages, lands, tenements, and hereditaments hereby expressed to be hereby granted and released, or intended so to be, with their appurtenances, by such apt and convenient name and names, quantities, qualities, numbers of acres, and other descriptions to ascertain the same, as shall be thought meet; which said fine or fines so as aforesaid, or in any other manner, or at any other time or times, levied or to be levied, or hereinbefore levied of the same manor or lordship, and hereditaments, or any part or parts thereof, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended to be and enure to such uses, upon such trusts, and to and for such ends, intents, and purposes, and under and subject to such provisos, powers, declarations, and agreements, as are hereinbefore expressed and declared concerning the said manor or lordship, manor farm, messuages, farms, lands, tenements, and hereditaments hereinbefore expressed to be hereby granted and released, or intended so to be, and to, for, or upon no other use, trust, end, intent, and purpose whatsoever. *And this indenture further witnesseth*, that in pursuance of the said agreements, on the part of the said *South*, and in consideration of the premises, and of the sum of 10s. of lawful money of Great Britain, to the said *South* in hand paid by the said *Milton*, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; he the said *South*, at the request and by the direction of the said *Locke* the elder, and *Emma Locke*, and *Locke* the younger, and upon the nomination and appointment of the said *Newton*, testified by their being respectively parties to, and sealing and delivering these presents, *Hath* bargained, sold, assigned, transferred, and set

set over, and by these presents *Doth* bargain, sell, assign, transfer, and set over unto the said *Milton*, his executors, administrators, and assigns, the manor or lordship of Great Brampton, and all such and so many of the messuages, farms, lands, tenements, hereditaments, and premises, comprized in the said term of 500 years, so created by the said in part recited indenture of settlement, and thereby limited to them the said trustees, upon and for the trusts, intents, and purposes hereinbefore mentioned, and to commence and take effect on the decease of the said *Locke* the elder, as aforesaid, as are described, and in and by these presents expressed to be granted and released, or intended so to be, together with all and every the rights, members, and appurtenances to the same manor and hereditaments belonging, or in any wise appertaining; and all the estate, right, title, interest, term of years, property, claim, and demand whatsoever, both at law and in equity, of him the said *South*, of, in, to, from, out of, and upon the said manor, hereditaments, and premises hereinbefore intended to be hereby assigned, and every of them, and every part and parcel thereof, *To have and to hold* the said manor or lordship, messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore mentioned to be hereby assigned by the said *South*, with their and every of their appurtenances, unto the said *Milton*, his executors, administrators, and assigns, from henceforth, for and during, and unto the full end of the said term of 500 years, to commence and be computed from the death of the said *Locke* the elder, as aforesaid, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same. *And* it is hereby agreed and declared, by and between the parties to these presents, that the said *Milton*, his executors, administrators, and assigns, shall stand and be possessed of, and interested in the said manor, messuages, lands, tenements, and hereditaments, and all and singular other the premises intended

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to be hereby assigned for all the said term of 500 years. *In trust*, in the first place, for the said *Newton*, his heirs, executors, administrators and assigns, and to assign and dispose of the same premises respectively, as he or they shall from time to time direct and appoint; and in the mean time to permit the same term, so far as the same relates to, or concerns the manor or lordship, manor-farm, messuages, farms, lands, tenements, hereditaments and premises, hereinbefore granted and released, or intended so to be, or any part or parts thereof; but subject to and without prejudice to the security hereby made to the said *Newton*, his executors, administrators and assigns, to wait upon and attend the uses and estates hereinbefore limited or declared in and of the same manor, messuages, lands, tenements and hereditaments; and so as to be subservient to the said uses and estates, and to protect the same from all intervening incumbrances, if any such there be: And after payment and satisfaction to the said *Newton*, his executors, administrators or assigns, of all such sums of money as shall be due or owing to him or them, in virtue of these presents, or be otherwise charged on the said manor or lordship and hereditaments, or any part thereof; and of all costs, charges and expences which shall be occasioned to the said *Newton* or *Milton*, or either of them, their or either of their executors, administrators or assigns, in any manner relating to the same, then upon trust, that the said *Milton*, his executors, administrators or assigns, shall reassign the said manor or lordship, messuages, farms, lands and other hereditaments, hereby assigned to him as aforesaid, or intended so to be, with the appurtenances, for so much of the said term of 500 years, as shall be then unexpired, unto the said *South*, his executors, administrators or assigns, free from all incumbrances to be done or occasioned by the said *Milton*, his executors, administrators or assigns, to be had and holden by the said *South*, his executors, administrators and assigns, upon and for the trusts, ends, intents and purposes,
and

and under and subject to such powers, provisoes, declarations and agreements, as by the said indenture or settlement are therein contained and expressed, concerning the same term of 500 years, or such and so many of them as shall be then existing, undetermined and capable of taking effect, and for and upon no other use, trust, end, intent or purpose whatsoever. [*Covenant that trustees have done no act to incumber.*] And the said *Locke* the elder, and *Locke* the younger, do and each of them for himself, his heirs, executors and administrators, doth hereby covenant, declare and agree to and with the said *South*, his executors, administrators and assigns, that they, their heirs, executors and administrators, shall and will at all times hereafter, save, defend, keep harmless and indemnified, the said *South*, his heirs, executors, administrators, lands, goods and chattels respectively, of, from and against all and all manner of actions, suits, claims, demands, loss, costs, charges, damages and expences whatsoever, which he or his executors, administrators or assigns, can, shall or may at any time or times hereafter, pay, expend or be put unto, for or by reason or means, or on account of his having assigned the said manor or lordship, and such of the messuages, lands, tenements and hereditaments, hereinbefore expressed to be hereby granted and released, or intended so to be, as are comprised in the said term of 500 years, so created as aforesaid and hereby assigned unto the said *Milton*, his executors, administrators and assigns, in the manner hereinbefore mentioned, by, through, or by means of the said — and — (*the two younger children*) or either of them, their or either of their executors, administrators or assigns, or in any other matter or thing whatsoever: And do hereby for themselves respectively, and their respective heirs, executors and administrators, declare and agree with the said *South*, that these presents, nor any thing herein contained, nor the common recovery and fine to be had and suffered and levied respectively, of the said manor or lordship, and hereditaments,

APPENDIX.

ditaments, hereinbefore expressed to be hereby granted and released, or intended so to be, in virtue of these presents, shall extend, or be deemed, taken or construed to deprive the said *Emma Locke* and her assigns, from taking and receiving, during the term of her natural life, the annuity or yearly sum of £700, so provided for her, in case she shall survive the said *Locke* the elder, by the aforesaid indenture or settlement, out of the several manors or lordships, messuages, lands, tenements and hereditaments, comprised in the said indenture or settlement, and not comprised in these presents, and also by and out of the manor or lordships, and hereditaments, hereby granted and released, or intended so to be, (but subject always nevertheless without prejudice, as to such last mentioned manor, or lordship and hereditaments, to the payment of the said sum of £4000, and the interest thereof to the said *Newton*, his executors, administrators and assigns, as aforesaid) in the same manner to all intents and purposes whatsoever, as if these presents were not made; and the said common recovery and fine, so agreed to be suffered and levied respectively, in pursuance thereof were not respectively suffered and levied, anything hereinbefore contained or expressed to the contrary thereof in anywise notwithstanding. *In witness, &c.*

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